

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the matter of	)	
	)	
Edward G. Taylor,	)	Proceeding Number _____
Ray Taylor	)	
Complainants,	)	
	)	Bureau ID Number EB-_____
v.	)	
	)	
AT&T Corp.,	)	
	)	
Defendant.	)	

**FORMAL COMPLAINT OF EDWARD G. TAYLOR  
AND RAY TAYLOR**

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*Counsel for Edward G. Taylor  
and Ray Taylor*

Dated: September 25, 2017

**SECTION 208 FORMAL  
COMPLAINT INTAKE FORM**

1. Case Name: Edward Garner Taylor and Ray Taylor v. AT&T
2. Complainant's Name, Address, Phone and Facsimile Number, e-mail address (if applicable): 2183 Bassett Street, Detroit, Michigan 48217
3. Defendant's Name, Address, Phone and Facsimile Number (to the extent known), e-mail address (if applicable): ATT 208 S. Akard Street, Dallas, Texas 75202
4. Complaint alleges violation of the following provisions of the Communications Act of 1934, as amended:

Answer (Y)es, (N)o or N/A to the following:

- Y 5. Complaint conforms to the specifications prescribed by 47 C.F.R. Section 1.734.
- Y 6. Complaint complies with the pleading requirements of 47 C.F.R. Section 1.720.
- Y 7. Complaint conforms to the format and content requirements of 47 C.F.R. Section 1.721, including but not limited to:
- Y a. Complaint contains a complete and fully supported statement of facts, including a detailed explanation of the manner in which the defendant is alleged to have violated the provisions of the Communications Act of 1934, as amended, or Commission rules or Commission orders.
- Y b. Complaint includes proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the Complaint.
- Y c. If damages are sought in this Complaint, the Complaint comports with the specifications prescribed by 47 C.F.R. Section 1.722(a), (c).
- Y d. Complaint contains a certification that complies with 47 C.F.R. Section 1.721(a)(8), and thus includes, among other statements, a certification that: (1) complainant mailed a certified letter outlining the allegations that formed the basis of the complaint it anticipated filing with the Commission to the defendant carrier; (2) such letter invited a response within a reasonable period of time; and (3) complainant has, in good faith, discussed or attempted to discuss, the possibility of settlement with each defendant prior to the filing of the formal complaint.
- N e. A separate action has been filed with the Commission, any court, or other government agency that is based on the same claim or the same set of facts stated in the Complaint, in whole or in part. If yes, please explain:
- N f. Complaint seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding that is concurrently before the Commission. If yes, please explain:
- Y g. Complaint includes an information designation that contains:
- Y (1) A complete description of each document, data compilation, and tangible thing in the complainant's possession, custody, or control that is relevant to the facts alleged with particularity in the Complaint, including: (a) its date of preparation, mailing, transmittal, or other dissemination, (b) its author, preparer, or other source, (c) its recipient(s) or intended recipient(s), (d) its physical location, and (e) its relevance to the matters contained in the Complaint; and
- Y (2) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the Complaint, along with a description of the facts within any such individual's knowledge; and
- Y (3) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations, and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information.
- Y h. Attached to the Complaint are copies of all affidavits, tariff provisions, written agreements, offers, counter-offers, denials, correspondence, documents, data compilations, and tangible things in the complainant's possession, custody, or control, upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the Complaint.
- Y i. Certificate of service is attached and conforms to the specifications prescribed by 47 C.F.R. Sections 1.47(g) and 1.735(f).
- N/A j. Verification of payment of filing fee in accordance with 47 C.F.R. Sections 1.721(13) and 1.1106 is attached.
- N/A 8. If complaint is filed pursuant to 47 U.S.C. Section 271(d)(6)(B), complainant indicates therein whether it is willing to waive the 90-day complaint resolution deadline.

- Y 9. All reported FCC orders relied upon have been properly cited in accordance with 47 C.F.R. Sections 1.14 and 1.720(i).
- Y 10. Copy of Complaint has been served by hand-delivery on either the named defendant or one of the defendant's registered agents for service of process in accordance with 47 C.F.R. Section 1.47(e) and 47 C.F.R. Section 1.735(c).
- Y 11. If more than ten pages, the Complaint contains a table of contents and summary, as specified in 47 C.F.R. Section 1.49(b) and (c).
- Y 12. The correct number of copies required by 47 C.F.R. Section 1.51(c), if applicable, and 47 C.F.R. Section 1.735(b) have been filed.
- Y 13. Complaint has been properly signed and verified in accordance with 47 C.F.R. Section 1.52 and 47 C.F.R. Section 1.734(c).
- Y 14. If Complaint is by multiple complainants, it complies with the requirements of 47 C.F.R. Section 1.723(a).
- Y 15. If Complaint involves multiple grounds, it complies with the requirements of 47 C.F.R. Section 1.723(b).
- N/A 16. If Complaint is directed against multiple defendants, it complies with the requirements of 47 C.F.R. Section 1.735(a)-(b).
- Y 17. Complaint conforms to the specifications prescribed by 47 C.F.R. Section 1.49.
-

## Instructions

1. This form must be completed by the Complainant.
2. Submit a completed intake form with any formal complaint to indicate that the complaint satisfies all procedural and substantive requirements of the Communications Act of 1934, as amended, and applicable FCC rules.
3. The original form must be filed with the original complaint and a copy of the form attached to each copy of the complaint that is either filed with the Commission or served on the opposing party.

**Notice:** Sections 206 to 209 of the Communications Act of 1934, as amended, provide the statutory framework for our current rules for resolving formal complaints filed against common carriers. Section 208(a) authorizes complaints by any person "complaining of anything done or omitted to be done by any common carrier" subject to the provisions of the Act. Section 208(a) specifically states that "it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper."

Pursuant to 47 C.F.R. Section 1.721(a)(12), a completed intake form must be submitted with any formal complaint to indicate that the complaint satisfies the applicable procedural and substantive requirements under the Communications Act of 1934, as amended, and the FCC's rules. The information will be used by the Commission to determine the sufficiency of the complaint and aid its processing by the staff.

**Remember:** You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection has been assigned an OMB control number of 3060-0411.

We have estimated that each response to this collection of information will take, on average, 30 minutes. Our estimate includes the time to read the instructions, look through relevant records, gather and maintain the required data, and actually complete and review the intake form. If you have any comments on this estimate, or how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, OMD-PERF, Washington, D.C. 20554, Paperwork Reduction Project (3060-0411). We also will accept your comments via Internet if you send them to [Vanessa.Lamb@fcc.gov](mailto:Vanessa.Lamb@fcc.gov) Please DO NOT SEND COMPLETED FORMS TO THIS ADDRESS.

The foregoing Notice is required by the Privacy Act of 1974, P.L. 93-579, December 31, 1994, 5 U.S.C. 552a(e)(3), and the Paperwork Reduction Act of 1995, P.L. 104-13, 44 U.S.C. Section 3501.

The Commission is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this form. We will use the information that you provide to determine the sufficiency of the complaint and to assist in processing and resolving the complaint. If we believe there may be a violation or potential violation of a Federal or state statute or regulation, rule, or order issued by a Federal or state agency, your form may be referred to the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation, or order. In certain cases, the information in your Form may be disclosed to the Department of Justice, court, or other adjudicative body when: (a) the Commission; or (b) any employee of the Commission; or (c) the United States government, is a party to a proceeding before the body or has an interest in the proceeding.

If you owe a past due debt to the Federal government, the taxpayer identification number (such as your social security number) and other information you provide also may be disclosed to the Department of the Treasury Financial Management Service, other Federal agencies, and/or your employer to offset your salary, IRS tax refund, or other payments to collect that debt. The Commission also may provide this information to those agencies through the matching of computer records where authorized.



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AT&T Corp. )  
Defendant. )

Proceeding Number \_\_\_\_\_  
File No. EB \_\_\_\_\_

**FORMAL OF EDWARD GARNER TAYLOR and RAY TAYLOR**

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*Counsel for Edward Garner Taylor  
and Ray Taylor*

September 25, 2017

1. Pursuant to Sections 201, 202, 206 and 208 of the Communications Act, Section 706 of the 1996 Telecommunications Act, and Sections 1.720 et seq. of the Commission's rules, Complainants Edward Garner Taylor bring this formal complaint against AT&T Corporation alleging: 1) unjust and unreasonable discrimination in the provision of broadband internet access service; 2) fails to deploy and serve all residents in Detroit, Michigan in an equitable fashion. 47 U.S.C. §§ 201, 202, 206, 208, 1302; 47 C.F.R. §1.720 *et seq.* Complainant further request the Commission to initiate an investigation pursuant to Section 403. 47 U.S.C. §403.

### **SUMMARY**

2. This complaint, brought by Edward Garner Taylor and Ray Taylor, two African-American residents of Detroit, Michigan, who allege that AT&T's offerings of high speed broadband service violates the Communications Act's prohibition against unjust and unreasonable discrimination; and undermines the Commission's goal and mandate to widely deploy communications services to all members of the public in the United States.

3. The complaint alleges specific harms inflicted on the Complainant. *See* Declaration of Edward Garner Taylor; and Ray Taylor, generally.

4. The complaint, relying on a study conducted by the National Digital Inclusion Alliance and Connect Your Community in Cleveland, titled, *AT&T's Digital Redlining*, demonstrates that the failure to provide high-speed broadband services to them is part of a pattern by AT&T not just in Cleveland, Ohio but also Detroit, Michigan and across the United States. *Id.*; National Digital Inclusion Alliance, *AT&T's Digital Redlining of Cleveland*,

<https://drive.google.com/file/d/0B62agIFGHrbTYtMGdK0XZ4NmM/view>, generally (last visited September 17, 2017) (hereinafter “NDIA Study”).

5. Patterning the findings in the NDIA Study, Dr. Brian E. Whitacre, Associate Professor and extension economist in the agricultural economics department at Oklahoma State University conducted an analysis of publicly available datasets submitted by AT&T on its Form 477 from June 2016 in other cities, specifically Detroit. *See* Decl. Brian Whitacre, ¶ 3. (FCC Form 477 from June 2016; Census poverty rates from the 2011-2015 ACS).

6. The analysis for Detroit demonstrates that AT&T withheld fiber-enhanced broadband improvements from most Detroit neighborhoods with high poverty rates, relegating them to Internet access services which are vastly inferior to the services enjoyed by their counterparts nearby in the higher-income Detroit suburbs. *Id.* at ¶ 4.

1. In general, AT&T offers home Internet, “cable” TV programming and IP phone services using one of three delivery technologies: (1) Fiber To The Home, (2) Fiber To The Node / VDSL, and (3) ADSL2. *Id.* at ¶ 16.

2. The newest and fastest of the three, not yet available in most of the Detroit market but coming on rapidly in other metropolitan areas, is Fiber To The Home (FTTH) – now branded as “AT&T Fiber”. *Id.* As the name suggests, this is very fast service (typically up to 1,000 mbps, i.e. 1 gbps) delivered by optical fiber all the way to the customer premises. *Id.* at ¶ 17. In Wayne County, only 64 out of the 29,100 Census blocks that AT&T provides service to have FTTH service. *Id.* The average poverty rate in the Census blocks with FTTH service is 5.5%, compared to the county average of 26.5%. *Id.*

7. Such low-income neighborhoods are relegated to an older, slower transmission technology called ADSL2, resulting in significantly slower Internet access speeds than AT&T

provides to middle-income city neighborhoods as well as most suburbs. *Id.* at ¶¶ 19, 28; As a result, their residents are left with severely limited and uneven Internet access; no access to AT&T's competitive fiber-enabled video service. *Id.*; NDIA Study 1-2.

8. As such, Complainants request that the Commission: (a) find that Defendant AT&T has violated Section 202, 254 and 706 of the Act, 47 U.S.C. § 202, 254, 1302, by failing to serve the low-income, communities of color in Detroit, Michigan, and as such, issue preliminary and permanent injunctions prohibiting AT&T from engaging in the discriminatory and anticompetitive conduct and practices alleged herein, and (b) find that AT&T has violated Sections 202, 254 and 706 of the Act, codified at 47 C.F.R. §1302, 47 U.S.C. §§ 202, 254 and 1302, by failing to deploy broadly, and thereby direct specific performance of AT&T's obligations, including but not limited to AT&T's obligation to provide broadband services to the lower income minority communities in Detroit, Michigan.

9. Complainants request the Commission move immediately to designate process for discovery.

10. Complainants seek a hearing on the amount of damages in a separate proceeding per a supplemental complaint per Commission Rule 1.722. 47 C.F.R. § 1.722.

### **PARTIES AND COUNSEL**

11. Complainant Edward Garner Taylor is an African-American resident of Detroit, Michigan who lives in a neighborhood considered low-income and consisting primarily of other African American residents. E. Taylor Decl. ¶1-3.

12. Complainant Ray Taylor is an Africa-American resident of Detroit, Michigan and the son of co-Complainant Edward Garner Taylor. R. Taylor Decl. . ¶1. He lives with his father



is neighborhood considered low-income and consisting primarily of other African American residents. *Id.*

13. Complainants are represented by Attorney Daryl D. Parks, Parks & Crump, LLC. 240 N. Magnolia Dr., Tallahassee, Florida.

14. Defendant AT&T is a Texas corporation with its principal place of business in 208 S. Akard Street, Dallas, Texas 75202. AT&T is operating as a common carrier, and specifically as a telecommunications, video programming service and a broadband service, that is subject to the Act.

15. Defendant is represented by Attorney James Meza III, Senior Vice President and Assistant General Counsel, AT&T 2260 East Imperial Highway, El Segundo, CA 90245

### **JURISDICTION**

16. As detailed in the legal analysis section below, the Commission has jurisdiction pursuant to Sections 201, 202 and 208 of the Communications Act, Section 706 of the 1996 Telecommunications Act, and Sections 1.720 et seq. of the Commission's rules. 47 U.S.C. §§ 201, 202, 208, 1302; 47 C.F.R. §1.720 et seq. AT&T is a common carrier, 47 U.S.C. § 153, subject to Title II of the Act, including Sections 202 and 706.

17. The Commission has authority to initiate an investigation pursuant to Section 403 of the Communications Act. 47 U.S.C. §403.

18. The Commission possesses additional authority pursuant to Sections 151 and 254 of the Communications Act, 47 USC § 151, 254, and the Commission's rules including 47 C.F.R. §§ 1.1, 4(i), 1.17, 1.24, 1.52.

## REQUIRED CERTIFICATIONS

19. *Settlement Discussions.* Counsel for Complainants and Defendant have engaged in significant discussions in writing and one in-person meeting regarding AT&T's service to low-income communities in Cleveland, Detroit and other cities nationwide. Defendant does not acknowledge its obligation to serve Complainants; therefore, parties are sufficiently far apart that we seek Commission intervention in this dispute. Pursuant to the Commission's rules (47 C.F.R. § 1.721(a)(8)), Complainants hereby certify that they have attempted in good faith to discuss the possibility of settlement with AT&T as to Cleveland, Detroit and other cities before filing this Formal Complaint. See Letter from Daryl D. Parks to AT& (dated April 24, 2017). (see attached)

At various points in time, Complainants and AT&T have discussed settlement but at present, the parties remain far apart. Counsel for AT&T expresses an unwillingness to engage in mediation. AT&T Provided a Letter Reply to Daryl Park's April 24, 2017-dated letter (dated April 28, 2017) and a second letter (dated May 5, 2017). To which, Daryl Parks replied with his a letter dated May 23, 2017 and to which AT&T replied on June 12, 2017. (see attached, noting express mention of the observation that there has been a pattern of redlining across various cities including Detroit)

The parties met in person during a July 21, 2017 meeting with AT&T attended by Daryl D. Parks, Cheryl Leanza consultant and staff support and Montana Williams, a summer Associate and staff support. AT&T representatives attending this meeting included Robert Quinn, SEVP, External & Legislative Affairs; Len Cali, SVP, Global Public Policy; Claudia Jones, SVP, Public Affairs & Communications; David Lawson, SVP, Assistant General Counsel

and Tanya Lombard, AVP, Public Affairs and Communications. The meeting ended with a flat denial by AT&T that it is redlining. Mr. Parks replied to this meeting with a letter to Chairman and CEO Randall Stephenson; Senior Vice President and Secretary Stacey Marris; Senior Vice President and assistant General Counsel James Meza III and Senior Vice President, External and Legislative Affairs, Robert Quinn expressing his disappointment with the tenor of members at the meeting, in light of commitments the company has made in the past to broadly serve.(dated July 24, 2017) see attached.

Pursuant to the Commission's rules regarding separate actions (47 C.F.R. § 1.721(a)(9)), Complainants state that no party has filed any separate actions in any fact finding or decision making body.

20. *Payment of Fee and Registration Number.* Complainants paid the required \$230.00 fee on September 25, 2017 and obtained the Commission-required FRN as follows: FRN # 0026738203

## **FACTS**

### **I. Introduction**

21. This complaint brings to the Commission the needs of low-income individuals who require, as most people in the United States do today, reasonable access to affordable broadband services. Digital or electronic redlining is the failure to provide service, or providing inferior service, to a community—typically to a community of color or a low-income community

in an urban area.<sup>1</sup> Such discrimination is most likely when communities do not benefit from competition and when they lack political power to advocate for their own rights as consumers.

## II. Complainants

22. Complainant Edward Garner Taylor of 2183 Bassett Street, Detroit, Michigan 48217 is a resident in the AT&T Detroit service area with first-hand experience as a AT&T customer of 19 years. E. Taylor Decl. ¶1-2. He asserts that as an attorney who sometimes works from his home office, he has an interest to acquire high speed broadband and as a customer of AT&T has paid for broadband access but get speeds that are too slow to accommodate the most basic of functionalities on their home, mobile, desktop devices. *Id.* at ¶4-5. Mr. Taylor has made several calls from home to AT&T and has had several AT&T technicians enter his home to ascertain his ability to acquire high speed broadband. *Id.* at ¶5. Each time, it was determined that he was not eligible as the community that he is located in was not wired to receive access. *Id.* A broadband speed test conducted at Mr. Taylor's home determined that he was getting only 3.33 Mbps download and a meager .033 Mbps upload. *Id.* at 3.

23. Complainant Ray Taylor also of 2183 Bassett Street, Detroit, Michigan 48217 is also a resident in the AT&T Detroit service area with his own first-hand experience as a lifelong resident in his father's home, a home which has relied on AT&T for service for close to 20 years. R. Taylor Decl. ¶1-2. He relies on the Internet to access college classes, curriculum, professor resources, to conduct school research. *Id.* at ¶4. Also, during summer months, the Internet is

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<sup>1</sup> Leonard M. Baynes, *Deregulatory Injustice and Electronic Redlining: The Color of Access to Telecommunications*, 56 Admin. L. Rev. 263, 269-270 (2004); James J. Halpert & Angela J. Campbell, *Electronic Redlining: Discrimination on the Information Superhighway*, cited in New Challenges: The Civil Rights Record of the Clinton Administration Mid-Term, 278-279 (Corrine M. Yu & William L. Taylor eds., 1995).

integral to his search for internship and employment, similar to other residents in the community that experience high rates of unemployment, and limited opportunities. *Id.*

24. It is the belief of Complainants that they and the residents and children of their community are deprived because they are stuck with horribly slow broadband service while still paying monthly fees for access. To the Taylors, AT&T has given their community inequity of service, compared to the service they have learned residents in parts of the city where there are wealthier residents who receive broadband service and bullet speed comparatively.

### **III. Evidence of AT&T Redlining in Detroit**

25. A recent detailed study, *AT&T's Digital Redlining*, by two non-profit groups with extensive experience in digital inclusion -- Connect Your Communities ("CYC") and National Digital Inclusion Alliance ("NDIA") along with an analysis mirroring the CYC and NDIA data for Detroit demonstrates that the experience of Complainants is not unique or individualized. *See* NDIA Study, generally; Declaration of Brian E. Whitacre at ¶¶ 4, 7, 13.

26. The study, based on AT&T's own data submitted to the Commission via Form 477 offers clear evidence that AT&T has withheld the standard product offering for most suburbs-fiber-enhanced its "Fiber To the Node" VDSL infrastructure ("FTTN")-- from most the overwhelming majority of census blocks with individual poverty rates above 35%. *Id.* at ¶¶ 26-28, 31-33. As a consequence, residents of these neighborhoods: suffer uneven, often severely limited Internet access, in many cases 3 mbps downstream or less, and also lack access to AT&T's competitive fiber-enabled video service and the benefits such competition and service would bring. *Id.*

27. On March 3, the FCC posted its latest round of Census block broadband deployment data, drawn from providers' Form 477 reports for June 2016. The CYC/NDIA

analysis is based on that most recent release, including that performed for Detroit. Whitacre Decl. ¶11. The maps and data included in this declaration also use this data. *Id.*

28. CYC and NDIA undertook this analysis to learn what the new Form 477 Census block data tell us about three questions: 1) Where has AT&T invested in providing its mainstream Internet speeds and video services to residents, and where has it chosen not to do so? 2) How does AT&T's deployment of FTTH/VDSL service compare to the distribution of high poverty areas, especially in Detroit? 3) Where are AT&T's "maximum advertised download speeds" still provided by ADSL2 technology – i.e. old-style copper wire from a "central office" – and what are those speeds, especially in the Census blocks farther away from the central offices serving them?. *Id.* at ¶ 12.

29. To address the first two questions, CYC and NDIA mapped all the Census blocks in Wayne County where AT&T's Form 477 data indicates it was able to provide Internet access via VDSL technology to at least one household, at a maximum download speed of 18 mbps or more, in June 2016. *Id.* at ¶ 13. (CYC and NDIA included a couple of blocks where the data show FTTH service with 1 Gbps download speeds.) *Id.* Then CYC and NDIA overlaid a map of all the Census block groups in the county where 35% of residents had incomes below the poverty line according to the most recent Census data available (from 2011-2015). *Id.* The analysis in this declaration replicated this process. *Id.*

30. The June 2016 Form 477 data lists 29,100 Census blocks in Wayne County served by AT&T with ADSL2, VDSL, or FTTH service. Of the 13,055 blocks located in the city of Detroit, in only 41% (5,406) is the Maximum Advertised Download Speeds provided by VDSL or FTTH. Of the 16,045 blocks in the rest of the county, the FTTH/VDSL percentage is nearly double (81%). Similarly, 59% of Detroit Census blocks are limited to ADSL service, which is

three times the percentage seen in the remaining Wayne County Census blocks (19%). Table 2 provides more information about the breakout between Detroit and the rest of Wayne County, including the percentage of Census blocks with 18mbps download speed available to them and average poverty rates. *Id.* at ¶ 30.

31. Over 21% of Detroit Census blocks were reported by AT&T to have maximum residential download speeds of 3 Mbps or less. The comparable percentage for the rest of Wayne County was 9%. A similar story can be told for high-poverty (35% or more) Census Blocks within the county: 22% are limited to speeds of 3 MBPS or less, more than double the rate found in the rest of the county. *Id.* at ¶ 32.

32. The analysis shows a clear and troubling pattern: A pattern of long-term, systematic failure to invest in the infrastructure required to provide equitable, mainstream Internet access to residents of the central city (compared to the suburbs) and to lower-income city neighborhoods. Specifically, AT&T has chosen not to extend its “FTTN” VDSL infrastructure – which is now the standard for most Wayne County suburbs and other urban AT&T markets throughout the U.S. – to the majority of Detroit Census blocks, including the overwhelming majority of blocks with individual poverty rates above 35%. Whitacre Decl. ¶33.

33. The study’s results provide clear evidence that AT&T has withheld fiber-enhanced broadband improvements from most Detroit neighborhoods with high poverty rates. *Id.* at ¶34.

34. AT&T has chosen not to extend its “FTTN” VDSL infrastructure – which is now the standard for most Wayne County suburbs and other urban AT&T markets throughout the U.S. – to the majority of Detroit Census blocks, including the overwhelming majority of blocks with individual poverty rates above 35%. Whitacre Decl. ¶¶13,23,25-26,31,36 These neighborhoods

have been relegated to an older, slower transmission technology called ADSL2, resulting in significantly slower Internet access speeds than AT&T provides to middle-income city neighborhoods as well as most suburbs. *Id.*

35. As a result, their residents are left with: 1) uneven, often severely limited Internet access – in many cases 3 Mbps downstream or less; and 2) no access to the competitive fiber-enabled video service that AT&T promised communities in exchange for “cable franchise reform”, i.e. the elimination of municipal cable franchising, in Michigan in 2007. *Id.* ¶ 36.

36. Because the patterns revealed by this analysis result from a decade of deliberate infrastructure investment decisions, I agree with NDIA and CYC’s conclusion that they constitute strong evidence of a policy and practice of “digital redlining” by AT&T — *i.e.* income-based discrimination against residents of lower-income urban neighborhoods in the types of broadband service AT&T offers, and in the company’s investment in improved service. *Id.* ¶ 37.; NDIA Study at 4.

#### **IV. Redlining is Widespread in the United States and Not Unique to Detroit**

37. Several recent independent studies demonstrate that redlining against low-income communities continues to be a serious problem. Two detailed analyses of Commission data by the prestigious and independent Center for Public Integrity demonstrate that the challenges in Detroit are not isolated cases. The Center found that, “the largest noncable internet providers collectively offer faster speeds to about 40 percent of the population they serve nationwide in wealthy areas compared with just 22 percent of the population in poor areas.”<sup>2</sup> In a nationwide analysis, the Center found “85% of people in places where the majority of households make \$80,694 or more

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<sup>2</sup> Allan Holmes and Ben Wieder, Center for Public Integrity, “DSL providers save faster internet for wealthier communities” (Oct. 14, 2016) <https://www.publicintegrity.org/2016/10/14/20341/dsl-providers-save-faster-internet-wealthier-communities>



can purchase internet access with 10Mbps or faster download speeds from AT&T, in areas it serves, whereas 69% of people living in places where the majority of households make less than \$34,783” can do the same.<sup>3</sup>

38. While carriers justify these disparities based on ostensibly logical differences, such as the density of a population, which impacts the cost of broadband deployment, the Center found “even controlling for population density, the rural poor are still in excess of one-and-a-half times as likely to lack high-speed broadband as rural wealthy families” and “in urban areas where 94 percent of households have access, low-income families are three times as likely to lack access as the wealthiest urban families.”<sup>4</sup>

39. Further, in a report issued this December, a detailed analysis of national broadband adoption data concluded, that many non-white racial and ethnic groups continue to lag behind Whites in home-internet adoption even after accounting for differences in income, age, education, and other factors. The report concluded, “Racial discrimination contributes to the digital divide.”<sup>5</sup> A study of AT&T’s deployment in California drew similar conclusions, high-speed fiber services are deployed disproportionately to the highest-income neighborhoods.<sup>6</sup>

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<sup>3</sup> Id.

<sup>4</sup> Allan Holmes, et al., Center for Public Integrity, “Rich people have access to high-speed Internet; many poor people still don’t,” (May 12, 2016) <https://www.publicintegrity.org/2016/05/12/19659/rich-people-have-access-high-speed-internet-many-poor-people-still-dont>.

<sup>5</sup> S. Derek Turner, Digital Denied (Free Press: December 13, 2016), [https://www.freepress.net/sites/default/files/resources/digital\\_denied\\_free\\_press\\_report\\_december\\_2016.pdf](https://www.freepress.net/sites/default/files/resources/digital_denied_free_press_report_december_2016.pdf)

<sup>6</sup> Garret Strain et al., Haas Institute, AT&T’s Digital Divide in California, Policy Brief 2017, [http://haasinstitute.berkeley.edu/sites/default/files/haas\\_broadband\\_042417-singles.pdf](http://haasinstitute.berkeley.edu/sites/default/files/haas_broadband_042417-singles.pdf)

## LEGAL ANALYSIS

### I. No Unjust or Unreasonable Discrimination or Practices.

40. Federal communications policy is replete with prohibitions and policies against discriminatory deployment and offerings of communications service.<sup>7</sup> The Commission is charged with “regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, *to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex*, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service....” 47 U.S.C. § 151 (emphasis added).

41. Section 202 of the Communications Act provides:

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or *to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.*

47 U.S.C. § 202 (emphasis added).

42. Section 201(b) of the Act states, in pertinent part, that “[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service [by wire or radio], shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.” 47 U.S.C. § 201(b). The Commission has held that unfair and deceptive marketing practices by interstate

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<sup>7</sup> For example, the 1992 Cable Act requires local franchising authorities to “assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.” 47 U.S.C. § 541(3). See also 47 U.S.C. § 254.

common carriers, including misrepresentations about a carrier's service constitute unjust and unreasonable practices under Section 201(b) of the Act.<sup>8</sup>

## **II. Broadband Access Internet Services Legal Treatment**

43. Broadband Access Internet Services (BIAS), including the DSL services subject to this complaint, are subject to Section 202. *Protecting and Promoting the Open Internet*, GN Docket 14-28, 30 FCC Rcd 5601 at paras. 331, 337 (2015). The Commission has interstate authority over broadband services because the Commission has declared it “broadband Internet access service is jurisdictionally interstate for regulatory purposes.” *Open Internet Order*, 30 FCC Rcd at 5803, para. 431. The Commission retained jurisdiction over BIAS in its *Open Internet Order* specifically because it anticipated that enforcement proceedings under Section 208 would be necessary to protect consumers. *Id.* at para 434 (citing the importance of network deployment).

## **III. Standard for Determining Discrimination Under Section 202**

44. As recent as 2015, AT&T announced its plan to expand the availability of ultra-fast speeds through AT&T GigaPowerSM to homes, apartments and small businesses in parts of 38 additional metros across the United States, it claimed it would serve a total at least 56 metros served, including in the Detroit area. Then, AT&T announced it is planning to expand the availability of ultra-fast speeds through AT&T GigaPowerSM to homes, apartments and small businesses in parts of 38 additional metros across the United States, which will total at least 56 metros served, including in the Detroit area.

45. During this announcement, then AT&T Michigan president Jim Murray stated, ““Bringing AT&T GigaPower to metro Detroit is big for businesses and residents throughout the region, and is yet another example of the continued investment and innovation AT&T is bringing

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<sup>8</sup> See, e.g., In the Matter of Advantage Telecommunications Corp., File No.: EB-TCD-12-00004803, NAL/Acct. No.: 201332170013, FRN: 0005077730 at paras (rel. April 25, 2017)

to our customers in Michigan,” adding “demand for high speed data grows with each new app and online service, and AT&T is delivering to meet that demand.” *See AT&T Plans to Launch Blazing Fast Gigabit Internet Speeds in Detroit Area*, <http://about.att.com/content/dam/snrdocs/GigaPower/FINAL%20-%20Detroit%20GigaPower%20Commitment%20Release.pdf>, (last visited September 22, 2017).

46. Under Section 202, “[c]ourts have fashioned a three-step analysis to determine whether a carrier has violated this section. The first inquiry is whether the services are ‘like’; if they are, the next inquiry is whether there is a price difference between them; and if so, the third inquiry is whether the difference is reasonable.” *Nat’l Communications Ass’n, Inc. v. AT&T Corp.*, 238 F.3d 124, 127 (2d Cir. 2001). The burden is on the Complainants to establish the first two elements. If the Complainants make this showing, the burden shifts to the carrier to justify the price disparity as reasonable. *Nat’l Communications Ass’n*, 238 F.3d at 129-133.

47. It is clear that service quality and price are inextricably linked – unjust offerings under Section 202 can be successfully brought if either the price or the product unjustly or unreasonably discriminates. *AT&T v. Central Office Tel.*, 524 US 214, 234 118 S Ct 1956 (1998). Moreover, refusing to offer a service to one customer that is offered to another customer is also a violation of Section 202. *See, e.g., In re American Trucking Assn., Inc.* 41 FCC2d 2 (1973).

48. Under the three-part test, the Commission follows a “functional equivalency” test to determine which products are “like,” which the Commission describes as follows:

This test looks to whether there are any material functional differences between the services. An important aspect of the test, as it has evolved, involves reliance upon customer perception to help determine whether the services being compared provide the same or equivalent functions. The test asks whether the services at issue are ‘different in any material respect’ and requires the Commission to examine both the nature of the services and the customer perception of the functional equivalency of the services. The test presumes that not all differences between the services make them a priori unlike.

Rather, the differences must be functionally material or, put another way, of practical significance to customers.

*In the Matter of Cellexis International*, 16 FCC Rcd 22887, 22892 (2001).

49. The Commission has affirmed that services subject not to tariffing, but only to the nondiscrimination obligations of Section 202, must not refuse to serve people because of their race or income. In a case dealing with mobile CMRS carriers, which were not subject to specific tariffing obligations but were subject to Section 202 nondiscrimination obligations, the Commission stated clearly, and was affirmed by the D.C. Circuit, that a provider may not “refuse ‘to deal with any segment of the public whose business is the ‘type normally accepted.’ ... [And] [t]hey cannot decline “to serve any particular demographic group (e.g. customers who are of a certain race or income bracket).” *Orloff v. FCC*, 352 F.3d 415, 420 (DC Cir. 2003) (citing *Orloff v. Vodafone*, 17 FCC Rcd 8987 at 8997 (2002)). The Commission specifically noted the danger of discrimination in a less-than-competitive market such as the one in this complaint. “If a CMRS market were inadequately competitive, or if some other market failure limited consumers' abilities to use market forces to protect themselves, Section 202 could be implicated.” *Id.* at 8997-8998. In a similar proceeding, the Commission found, “Assuming all relevant product and geographic markets become substantially competitive... carriers may still be able to treat some customers in an unjust, unreasonable, or discriminatory manner. Competitive markets increase the number of service options available to consumers, but they do not necessarily protect all consumers from all unfair practices. The market may fail to deter providers from unreasonably denying service to, or discriminating against, customers whom they may view as less desirable.” *PCIA Forbearance Order*, 13 FCC Rcd at 16868, para. 23 (1998).

#### **IV. Complainants Demonstrate an Unreasonable Difference in Service**

50. The instant complaint meets the Complainants' burden under the three-part test. In the case of the Complainants here, AT&T offers a product that is inferior to consumers living directly adjacent to consumers that receive a high-quality service. Whitacre Decl. ¶4 ; NDIA, generally. Consumers view ADSL and VDSL2 as services which meet the same needs. Whitacre Decl. ¶21. Both are broadband services used to reach the Internet, stream video, and other similar needs. *Id.*; NDIA Study, generally. One product is of much lower quality than another. Whitacre Decl. ¶24. The only meaningful difference between these consumers is their residence in an area in the urban core of Cleveland, consisting of significantly more low-income families and people of color. *Id.*; NDIA Study, generally.

51. The difference in price between the services offered by AT&T is not relevant here because the Complainants do not seek lower quality services at lower prices, he seeks a higher quality service. *See* Taylor Decl. ¶ 5; R. Taylor Decl. ¶¶ 3. While Complainants are paying significant, potentially unjust sums, for low-quality service, the core concern here is the Complainants' inability to obtain speeds and quality sufficient to meet their needs. *Id.*

52. The loss of competition harms the Complainants, because deployment of fiber based technology has a "positive effect on broadband competition." *In the Matter of Applications of AT&T and DirecTV*, 30 FCC Rcd. 9131, para. 345 & n.1040 (2015) (study showed "cable market share declines by approximately 40 percent when facing competition from FTTP instead of DSL.") The loss of competition to some consumers means those consumers do not benefit from lower prices and higher quality. Whitacre Decl. ¶¶ 24, 26; NDIA Study, generally.

53. AT&T has been found to violate section 202 before, and is not immune from section 202 merely because its discrimination is based on investment decisions. In *Nat'l Communications Ass'n, Inc. v. AT&T Corp.*, the Second Circuit affirmed a 202 violation, in part, because AT&T had given far fewer resources to a department that serviced one set of customers than the department that served AT&T's own customers. *Nat'l Communications Ass'n, Inc. v. AT&T Corp.*, 238 F.3d 124, 126 (2d Cir. 2001).

#### **V. The Commission Must Act Regardless of BIAS Title II Classification**

54. The Commission has recently questioned whether broadband services should be subject to Title II of the Act. *Restoring Internet Freedom*, Notice of Proposed Rulemaking, Docket 17-108 (rel. May 23, 2017). While this complaint is ample evidence for the reasons why the Commission should retain its Title II over broadband, nonetheless the Commission possesses authority no matter its future decision in that proceeding.

55. Moreover, even if the Commission was to revise its regulatory treatment of broadband service, this complaint should not be dismissed based on a future regulatory decision.

56. National policy supports “deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans” and “access to advanced telecommunications and information services ... in all regions of the Nation.” 47 U.S.C. § 1302(a), 254(b)(2).

57. Section 706(a) of the 1996 Telecommunications Act directs the Commission to utilize its arsenal of tools to promote broadband deployment, including, “measures that promote competition in the local telecommunications market.” 47 U.S.C. § 1302(a).

58. The Commission is directed in Section 706 to “take immediate action to accelerate deployment of [advanced telecommunications] capability by removing barriers to

infrastructure investment and by promoting competition in the telecommunications market.” 47 U.S.C. § 1302(b).

59. The Commission has authority here because the courts have affirmed the Commission’s conclusion that Section 706 contains an operative grant of authority. *Verizon v. FCC*, 740 F.3d 623, slip. Op 20-22 (D.C. Cir. 2014); *see also United States Telecom Ass’n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016).<sup>9</sup>

60. The Commission is authorized under Section 706 because Complainants do not seek in this case sweeping common carrier regulation, but rather a finding that advanced telecommunications capabilities have not been deployed to low-income neighborhoods in Detroit, MI, in contravention of Section 706.

61. Section 706 is therefore directly applicable to the deployment of advanced services to all Americans, and thus grants direct authority for the Commission to act.

#### **VI. The Commission Should Initiate an Investigation Pursuant to Section 403.**

62. Under Section 403, the Commission has sweeping authority to “institute an inquiry” pursuant to an authorized complaint relating to the enforcement of Commission rules. 47 U.S.C. § 403.

To that end, it should investigate the following counts:

#### **COUNT I: Section 202, 47 U.S.C. § 202(a), Unjust and Unreasonable Discrimination**

Complainants repeat their assertions in paragraphs 1 thru 62 of this Complaint, as they set forth herein.

63. Section 202(a) of the Communications Act states, “It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in ... facilities, or services for

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<sup>9</sup> *Comcast v. FCC*, 600 F.3d 642 (D.C. Cir. 2010), is not relevant here because the Commission has now revisited its previous position which concluded that Section 706 was not a grant of authority.



or in connection with like communication service, ... or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.” 47 U.S.C. § 202(a).

64. As is documented in the complaint and attached declarations, AT&T has not offered Complainants the same facilities or the same quality of broadband service as it has offered to similarly-situated customers Taylor Decl. ¶ 5; R. Taylor Decl. ¶¶ 3

65. Specifically, Mr. Taylor describes his status as AT&T customers, his interest and unsuccessful efforts to obtain high-speed broadband from AT&T. Taylor Decl. ¶ 5; R. Taylor Decl. ¶¶ 3.

66. As described in the Complaint’s legal analysis, high-speed broadband service is subject to Section 202(a) of the Communications Act. Complaint ¶38.

67. The complaint details findings demonstrating the disparities in facilities and service deployment between proximate low-income and wealthier communities in Detroit, MI and its suburbs. Complaint ¶¶22-33; Whitacre Decl. ¶¶27-34.

68. Complainants demonstrate that they live in high-poverty neighborhoods described in the *AT&T’s Digital Redlining* report and Dr. Whitacre’s analysis. Taylor Decl. ¶ 5; R. Taylor Decl. ¶¶ 3.

69. Complainants demonstrate the harm to him as a result of not being able to obtain high speed broadband Internet from AT&T. *Id.*

70. AT&T has violated Section 202(a) through “unjust and unreasonable discrimination” by failing to provide Fiber To The Node (FTTN) “facilities” and high-speed broadband Internet “service” to a “class of persons” who are low-income, and to census *blocks*

identified in the complaint where low-income households reside, *i.e.*, “localities”, causing them harm.

71. In applying the standard the Commission has adopted, it is instructed to launch: “[a]n inquiry into whether a carrier is discriminating in violation of § 202(a). This inquiry involves a three-step inquiry: (1) whether the services are ‘like’; (2) if they are, whether there is a price difference between them; and (3) if there is, whether that difference is reasonable.” .” *Nat’l Communications Ass’n, Inc. v. AT&T Corp.*, 238 F.3d 124, 127 (2d Cir. 2001). The Commission applies the same test when evaluating formal complaints filed with the Commission.

72. Accordingly, when applied here, AT&T unreasonably discriminated against the lower income citizens of Detroit, MI by subjecting them to differences in service speed for broadband service, in violation of Section 202(a) of the Act, 47U.S.C. §202(a).

73. As a direct and proximate result of AT&T’s violations of the Act, Complainants have been deprived of services at comparable speeds as other residents in their city. AT&T should be made to rectify its service lapse *by* creating accommodations or a means for Complainants to receive equitable service, and the Commission should launch in inquiry to determine if a violation of Section 202(a) has occurred.

**COUNT II: Section 706 of the Act, codified at 47 C.F.R. §1302**

Complainant repeats his assertions in paragraphs 1 thru 73 of this Complaint, as he sets forth herein.

74. The Commission has authority to act under 47 U.S.C. § 1302(b). Complaint ¶¶46-53. Section 706, 47 U.S.C. §1302(b) directs the Commission “determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely

fashion,” and if not, “take immediate action to accelerate deployment of such capability.” .”

Section 706 of the Act, codified at 47 C.F.R. §1302.

75. Complainants have shown above that AT&T has not deployed “advanced telecommunications capabilities” to low income neighborhoods Detroit, Michigan “in a reasonable and timely fashion,” as evidenced of the disparate treatment of low-income Census blocks and wealthier Census blocks, in contravention of Section 706, 47 U.S.C. § 1302(b).

Complaint ¶¶21-

Accordingly, AT&T has failed to Support the Commission’s mission to broadly deploy Telecommunications Services to all, and as such, the Commission must investigate and

**actRELIEF REQUESTED**

76. Complainants request that the Commission: (a) find that Defendant AT&T has violated Section 202, 254 and 706 of the Act, 47 U.S.C. § 202, 254, 1302, by failing to serve the low-income, communities of color in Detroit, Michigan, and as such, issue preliminary and permanent injunctions prohibiting AT&T from engaging in the discriminatory and anticompetitive conduct and practices alleged herein, and (b) find that AT&T has violated Sections 202, 254 and 706 of the Act, codified at 47 C.F.R. §1302, 47 U.S.C. §§ 202, 254 and 1302, by failing to deploy broadly, and thereby direct specific performance of AT&T’s obligations, including but not limited to AT&T’s obligation to provide broadband services to the lower income minority communities in Detroit, Michigan.

77. Complainants seek a hearing on the amount of damages in a separate proceeding per a supplemental complaint per Commission Rule 1.722. 47 C.F.R. § 1.722.

78. If the Commission is unwilling at this time to proceed through an adjudication, it should refer the matter to the ALJ for a public hearing under 47 U.S.C. §403.

79. Complainants request all other such relief as may be just and proper.

## **CONCLUSION**

For the reasons set forth above and in the Formal Complaint, the Commission should grant Complainants the relief he has requested.



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*Counsel for Edward Garner Taylor  
and Ray Taylor*

September 25, 2017

**Federal Communications Commission  
Washington, DC 20554**

In the matter of	)	
	)	
Edward Garner Taylor, Esq.	)	
Ray Taylor	)	
Complainants	)	
	)	
	)	Proceeding Number _____
	)	File No. EB _____
v.	)	
	)	
AT&T Corp.	)	
Defendant.	)	

**INFORMATION DESIGNATION**

Pursuant to Sections 1.721(a)(10)(i), (ii), (iii), and 1.721(a)(11) of the Federal Communications Commission's ("Commission") Rules, 47 C.F.R. §§ 1.721(a)(10)(i), (ii), (iii) and 1.721(a)(11), Petitioners submit this information designation.

**Individuals Believed to Have First-Hand Knowledge, Rule 1.721(a)(10)(i)**

In accordance with Sections 1.721(a)(10)(i), (ii), (iii), and 1.721(a)(11) of the Federal Communications Commission's ("Commission") Rules, 47 C.F.R. §§ 1.721(a)(10)(i), (ii), (iii) and 1.721(a)(11), and 1.724(f)(2), and 1.726(d)(2) Petitioners set forth to the best of their knowledge, the individuals, names, addresses and positions of those with first-hand knowledge of the lapses by AT&T that form the basis of this Complaint:

Name	Title	Address	Facts Within Knowledge
Edward Garner Taylor	Resident	2183 Bassett Street, Detroit, Michigan 48217	Generally, experiences as a Detroit resident at the identified address for 19 years attempting to obtain high-speed broadband Internet at home and consequences of not obtaining high-speed broadband Internet at home; Inferior service impedes his ability to work from home. Can not access online files, webcast and many other resources that contribute to his profession. Specifically, as a resident of Detroit in a neighborhood without upgraded infrastructure, the speed of broadband service at a speed of 3.33 Mbps download and .033 Mbps upload; That he was told by AT&T technicians, including some that came to his home, that he did not have access to higher speeds.
Ray Taylor	Resident	2183 Bassett Street, Detroit, Michigan	That he has relied on AT&T for internet and broadband access for as long as he has resided in his parents home, a 19-year customer of AT&T; That specifically, the extreme slow speeds and lag deter him and prevent him from completing college course assignments and research; and from conducting internship and job opportunities and filling out online application forms and submitting them because his home suffers from a speed of 3.33 Mbps upload and .033 Mbps

			download.
Dr. Brian Whitacre	Oklahoma State University Associate Professor and Extension Economist in the Agricultural Economics Department	504 Ag Hall Stillwater, OK 74078	What his analysis of AT&T's Form 477 data submitted during the relevant time reveals in terms of which communities and neighborhoods had what level of service; that consumers, generally, view ADSL and VDSL2 as services which meet the same needs; What communities had access to ADSL and VDSL2 service; That wireless services are typically subject to data caps and therefore are an inferior substitution to fixed broadband; that the lack of competitive fiber-based products reduces competition in the provision of broadband services; that AT&T has withheld fiber-enhanced broadband improvements from most Detroit neighborhoods with high poverty rates.

### **Documents, Data Compilations, and Tangible Things, Rule 1.721(a)(10)(ii)**

The National Digital Alliance has released a report that reviews AT&T's own FCC filings of the relevant coverage area and examines advertised speeds by AT&T itself; and identifies which areas had access to high speed broadband and which did not. National Digital Inclusion Alliance, *AT&T's Digital Redlining*, <https://drive.google.com/file/d/0B62agIFGHrbTYtMGdK0XZ4NmM/view>, generally (last visited September 17, 2017) (hereinafter NDIA Study).

This report was released on March 10 2017 and published online by a research team for the public, with a copy of the report at the respective residences of each Petitioner and their attorney; and can be found <https://digitalinclusion.org/blog/2017/03/10/atts-digital-redlining-of->



cleveland/. The report is relevant to the Complaint because it essentially explains the reasons Complainants have been unable to receive high speed broadband services in their home and community.

The Declaration by Dr. Brian E. Whitacre includes detailed economic analysis, charts and spreadsheets analyzing the data provided by AT&T itself in its Form 477 data for the relevant time period, but specifically for the city of Detroit, Michigan by mirroring and patterning the analysis conducted in the NDIA Study.

**Identification of Persons and Documents, Rule 1.721(a)(10)(iii)**

Pursuant to Section 1.721(a)(10)(iii) of the Commission's Rules, 47 C.F.R. § 1.721(a)(10)(iii) Complainants' attorney, Daryl Parks of Parks & Crump, identified his client's experiences, which are the subject of the complaint, as relevant to this complaint. After exploring the reasons for the individual experience of the Complainants, using general research, Mr. Parks identified the data and analysis in the NDIA Study as relevant, and considered the mirrored analysis conducted by Dr. Whitacre for Detroit, Michigan based on AT&T's Form 477 data in that city; and determined there are systematic actions by AT&T which resulted in Complainants' inability to obtain high speed Internet service.

Mr. Parks consulted with expert Dr. Brian Whitacre to verify and substantiate the findings of NDIA's report, and identified Dr. Whitacre's materials verifying his replication of the NDIA study on Form 477 data submitted by AT&T for the city of Detroit as relevant to the complaint, which he summarized in a Declaration attached to the Complaint; *See* Declaration of Brian E. Whitacre, generally.

**Documents Relied Upon, Rule 1.721(a)(11)**

In accordance to Section 1.721(a)(11) of the FCC's Rules at 47 C.F.R. § 1.721(a)(11), petitioner attached declarations, the NDIA report, documents, data compilations and tangible things in Petitioners' possession, custody, or control, upon which Petitioners relies or intends to rely to support the facts alleged and legal arguments made in its Formal Complaint, as exhibits and certifies that these exhibits have been served, along with the Formal Complaint to AT&T.

A handwritten signature in dark ink, appearing to read 'D. Parks', with a long horizontal flourish extending to the right.

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*Counsel for Edward Garner Taylor  
and Ray Taylor*

September 25, 2017

**Federal Communications Commission  
Washington, DC 20554**

In the matter of	)	
	)	
Edward Garner Taylor, Esq.	)	
Ray Taylor	)	
Complainants	)	
	)	Proceeding Number _____
	)	File No. EB _____
v.	)	
	)	
AT&T Corp.	)	
Defendant.	)	

**EDWARD GARNER TAYLOR’S & RAY TAYLOR FIRST REQUEST FOR  
INTERROGATORIES OF AT&T CORP**

Pursuant to 47 C.F.R. § 1.729(a), Complainants Edward Garner Taylor (Resident) hereby submits to the Federal Communications Commission, and concurrently serves on Defendant AT&T Corp (“ATT”), this First Request for Interrogatories (“Interrogatories”). AT&T shall respond to these Interrogatories in the time provided by 47 C.F.R. § 1.729, in writing, under oath, and in accordance with the Commission’s rules and the Instructions and Definitions set forth herein.

**DEFINITIONS**

1. All terms used herein shall be construed according to common understood definition of the terms and not in complex or highly technical terms, though acronyms and other terms of art in the telecommunications industry shall have the meaning typically ascribed to them by the industry.
2. “Any” means each, every, and all persons, places, or things to which the term refers.
3. “Communication” means any transfer of information, whether written, printed, electronic, oral, pictorial, or otherwise transmitted by any means or manner whatsoever.
4. “Concerning” means relating to, involving, reflecting, identifying, stating, referring to, evidencing, constituting, analyzing, underlying, commenting upon, mentioning, or connected with, in any way, the subject matter of the request.
5. “Copy” means any reproduction, in whole or in part, of an original document and includes, but is not limited to, non-identical copies made from copies.
6. “Describe” and “description” means to set forth fully, in detail, and unambiguously each and every fact of which you have knowledge related to answering the interrogatory.
7. “Document” means any written, drawn, recorded, transcribed, filed, or graphic matter, including scientific or researchers’ notebooks, raw data, calculations, information stored in computers, computer programs, surveys, tests and their results, however produced or reproduced. With respect to any document that is not exactly identical to another document for any reason, including but not limited to marginal notations, deletions, or redrafts, or rewrites, separate documents should be provided.
8. “Identify,” “identity,” or “identification,” when used in relation to “person” or “persons,” means to state the full name and present or last known address of such person or persons and, if a

natural person, his or her present or last known job title, the name and address of his or her present or last known employer, and the nature of the relationship or association of such person to you.

9. “Identify,” “identity,” or “identification,” when used in relation to “document” or “documents,” means to state the date, subject matter, name(s) of person(s) that wrote, signed, initialed, dictated, or otherwise participated in the creation of the same, the name(s) of the addressee(s) (if any), and the name(s) and address(es) (if any) of each person or persons who have possession, custody, or control of said document or documents.

10. “Identify” when used in relation to a “communication” means to identify the participants in each communication and, if such communication is not contained in a document, the date, place, and content of such communication.

11. “Including” means including but not limited to.

12. “Original” means the first archetypal document produced, that is, the document itself, not a copy. 15. “Person” or “persons” means any natural person or persons, group of natural persons acting as individuals, group of natural persons acting as a group (e.g., as a board of directors, a committee, etc.), or any firm, corporate entity, partnership, association, joint venture, business, enterprise, cooperative, municipality, commission, or governmental body or agency.

13. “Relevant Period” means January 2016 to the present, unless otherwise specified.

14. “You,” “your,” or “AT&T” means AT&T Corp any of its parent, affiliated, or subsidiary companies; and employees, officers, directors, agents, representatives, and all other persons or entities acting or purporting to act on their behalf, including without limitation any outside

consultant or witness retained by them. In that regard, each and every interrogatory contained herein is directed at you.

### **INSTRUCTIONS**

When responding to the following interrogatories, please comply with the instructions below:

1. Each interrogatory is continuing in nature and requires supplemental responses as soon as new, different, or further information is obtained that is related to answering the interrogatory.
2. Provide all information, including all documents, related to answering the interrogatory that are in your possession, custody, or control, regardless of whether such documents are possessed directly by you or by your employees, officers, directors, agents, representatives, or any other person or entity acting or purporting to act on their behalf.
3. In any interrogatory, the present tense shall be read to include the past tense, and the past tense shall be read to include the present tense.
4. In any interrogatory, the singular shall be read to include the plural, and the plural shall be read to include the singular.
5. In any interrogatory, the use of the conjunctive shall be read to include the disjunctive, and the use of the disjunctive shall be read to include the conjunctive.
6. Any document withheld from production on the grounds of a privilege is to be specifically identified by author(s), addressee(s), length, and date, with a brief description of the subject matter or nature of the document, and a statement of the privilege asserted.
7. Please begin the response to each request on a separate page.
8. Please restate each interrogatory before providing the response or objection.

9. Please specify the interrogatory in response to which any document, narrative response, or objection is provided. If a document, narrative response, or objection relates to more than one request, please cross reference.
10. For each separate interrogatory, identify the person(s) under whose supervision the response was prepared.
11. For any interrogatory consisting of separate subparts or portions, a complete response is required to each subpart as if the subpart or portion were propounded separately.
12. Produce any documents in the form of legible, complete, and true copies of the original documents as “original” is defined herein. To the extent that excel spreadsheets are produced, they should be provided in native format.
13. Please provide all documents in their native format, together with all metadata.
14. If you assert that documents or information related to answering an interrogatory are unavailable or have been discarded or destroyed, state when and explain in detail why any such document or information was unavailable, discarded, or destroyed, and identify the person directing the discarding or destruction. If a claim is made that the discarding or destruction occurred pursuant to a discarding or destruction program, identify and produce the criteria, policy, or procedures under which such program was undertaken.
15. If any interrogatory cannot be answered in full after reasonable inquiry, provide the response to the extent available, state why the interrogatory cannot be answered in full, and provide any information within your knowledge concerning the description, existence, availability, and custody of any unanswered portions.

**INT REQUEST 1.** Share the cost and demand forecast modeling used to determine which neighborhoods in Detroit, Michigan received VDSL service and/or Fiber to the Home (FTTH).

**EXPLANATION:**

To the extent that AT&T has claimed that it has selected certain neighborhoods to serve based on cost and demand, providing this information is essential for Complainants to ascertain why his home was omitted.



**INT REQUEST 2.** Provide all marketing of broadband services which targets African American, Hispanic, Asian and other communities of color and low-income communities in Detroit and the state of Michigan.

**EXPLANATION:**

AT&T expressed to the Commission a commitment to serve all communities including those in service areas with high concentration of people of color; and therefore it is important that Complainants learn how, if at all, others in his neighborhood and community became aware of services and products offered by AT&T.

**INT REQUEST 3.** Provide how AT&T determines what the average data usage is for various broadband functionality, such as email, streaming movies, internet browsing, music, and gaming.

**EXPLANATION:**

AT&T asserts that it must manage its network efficiently and therefore, it must have established a benchmark or certain standards to determine the amount of usage expended by the average users, high bandwidth users and less active users. Complainants seek access to certain services and must know this information in order to ascertain whether they were properly assessed or perhaps incorrectly assessed because AT&T's knowledge and awareness of their needs are not matched with their actual needs.

**INT. REQUEST 4.** Provide racial and ethnic breakdown of AT&T customers nationwide, Michigan and Detroit, broken down by municipality or service area.

**EXPLANATION:**

This complaint is based on recently published data by NDIA that suggests AT&T is purposefully bypassing residents by ethnic and racial characteristics and in order to determine if there is corroboration of fact in this data, Complainants would require access to this data that AT&T presumably has in its possession.

**INT. REQUEST 5** Provide marketing budget directed toward African American, Hispanic, Asian and other communities of color and low-income communities in Detroit, the state of Michigan, and nationally. Include aggregate marketing budget, in particular, the percentage of the total budget targeting communities of color.

**EXPLANATION:**

AT&T states that it serves the city and it creates marketing materials and advertising in the city to promote services and offerings. Complainants require awareness of the amount of money spent on marketing because that will assist it in determining if the company's outreach spend and effort is adequate given the Complaint's concerns about non-ubiquitous adoption. If the problem has to do with marketing, then making the marketing budget available will assist the Complainants and the Commission better understand.

**INT. REQUEST 6.** Provide total participation rates in AT&T's Access program in Michigan, Detroit and and nationally. Provide all demographic information, including income, race and ethnicity, of participants.

**EXPLANATION:**

AT&T's program is stated to serve underserved and unserved communities and therefore a breakdown of the demographics of these communities is essential for ascertaining if it is meeting its stated purpose. If Complainants could access this information, he would have a better understanding of AT&T's stated goals of servicing the city.

**INT. REQUES 7.** Provide cost, service tiers, data limitations, costs per line, tethering and hot spot policies for mobile broadband products offered in the state of Michigan and Detroit.

**EXPLANATION:**

To the extent that some members of the Detroit service area rely on mobile broadband access, Complainants are eager to learn what AT&T's costs, limits and policies are for providing this alternative to Michigan and Detroit residents that do not have access to terrestrial broadband.

**INT. REQUEST 8** Share data regarding the total number of consumer complaints in Detroit, MI, about the speed of broadband, the geographic location of those complaints, the resolution of those complaints from January 2007 to Present

**EXPLANATION**

AT&T is bound by its franchise agreements, its FCC public service obligations and customer service provisions of both to monitor, intake and resolve customer complaints. Complainants would benefit from learning what the process is generally, for AT&T. This information is most likely in the custody of AT&T and providing it would aid the Commission in determining if there are other similarly-situated residents who have put AT&T on notice of their concerns prior to the filing of this Complaint.

**INT REQUEST 9.** Please provide a listing of all higher income areas in the Detroit metropolitan area where broadband speeds of the following levels are offered, and AT&T's definition of income: 1.5 Mbps or less; 3 Mbps or less; 6 Mbps or less; 18 Mbps or less; 24 Mbps or less.

**EXPLANATION:**

The report that spawned and initiated Complainant to file his concerns with the Commission did not identify with more specificity which areas by income have what level of broadband speed access. AT&T is the custodian of this information and if it provides it on the record, the Complainants and the Commission would get a more complete picture of the service demographic by access.

**INT REQUEST 10 Current plans to deploy fiber in Detroit and in the state of Michigan.**

**EXPLANATION:**

To the extent that AT&T has already indicated to the public and the Commission that it intended to deploy fiber in Detroit and the state of Michigan, it is essential to know whether it has completed its build out or has plans to deploy further.



Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'D. Parks', is centered within a light gray rectangular box.

Daryl Parks  
Parks & Crump, LLC  
240 North Magnolia, Drive  
Tallahassee, Florida, 32301

(850) 222-3333  
(850) 224-6679 (fax)

*Counsel for Edward Garner Taylor  
And Ray Taylor*

September 25, 2017

## CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2017, I caused a copy of the foregoing Formal Complaint, as well as all accompanying material to be served as indicated below to the following.

AT&T Corp.,  
One AT&T Way  
Bedminster, NJ 07921  
(Hand-Delivery by Courier)

Randall L. Stephenson  
Senior Vice President and Secretary  
AT&T  
208 S. Akard Street, Suite 3241  
Dallas, TX 75202  
(Hand Delivery)

James Meza III  
Senior Vice President and Assistant General Counsel  
AT&T  
2260 East Imperial Highway  
El Segundo, CA 90245  
(Via Email)



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Daryl Parks  
Parks & Crump  
240 North Magnolia, Drive  
Tallahassee, Florida, 32301  
[dparks@parkscrump.com](mailto:dparks@parkscrump.com)  
(850) 222-3333  
(850) 224-6679

Dated: September 25, 2017

## **CERTIFICATE**

I hereby certify that on September 25, 2017, I paid the \$240 filing fee via ECFS. My law firm's FRN is Parks & Crump, LLC 0026738203. I certify the payment was made on the same day as the filing.



Daryl Parks  
Parks & Crump  
240 North Magnolia, Drive  
Tallahassee, Florida, 32301

(850) 222-3333  
(850) 224-6679 (fax)

*Counsel for Edward Garner Taylor  
and Ray Taylor*

September 25, 2017

*Before the*  
**Federal Communications Commission**  
**Washington, DC 20554**

In the matter of

Edward G. Taylor, esq

v.

AT&T Corp.  
One AT&T Way  
Bedminster, NJ 07921

Proceeding Number \_\_\_\_\_  
File No. EB- \_\_\_\_\_ -

**DECLARATION OF EDWARD G. TAYLOR**

1. My name is Edward G. Taylor, I live at 2183 Bassett Street, Detroit, Michigan 48217

2. I am a residential customer of AT&T. I have been an paying AT&T customer since 1998

3. I conducted a speed test and learned that I get 3.33 mpbs upload and only .033 mbps download which is abysmal compared to other parts of the city that are more wealthy that receive much more true high speed access.

4. Because I work from home and am one of few professionals who have chosen to set up shop within a middle to low income African-American community, more specifically in the city of Detroit, I am beholden to receiving the level of broadband service available in this community.

5. In order for me to properly service this community and meet its needs, it is imperative that I be able to work from home, access legal databases, communicate with online court systems and set up meetings virtually and online with clients that are unable to travel to my

home office to meet. All of these activities require adequate internet access. Unfortunately, my Internet access at home is painfully slow. I would prefer to purchase faster access to the Internet. I attempted to obtain faster high speed broadband service from AT&T and made several phone calls to the phone number advertised for adding on service

6. I am harmed by the failure of AT&T to offer me faster speed broadband service because I cannot serve an underserved and unserved market with limited access to professional legal services. The extremely slow service that I endure makes it hard for me to continue to work inside this community and if I am forced to close up shop within this community, the community as a whole would suffer from not having access to one of the few legal professionals that are willing to sacrifice higher salaries and prestige and serve lower income and low-income African American residents from within their communities, which is essential for establishing and maintaining trust.

7. Also, personally, I have a difficult time operating my business and personal affairs using online services. Online banking and accessing government offices, online databases for research and more are all virtually impossible given the fact I have such slow upload and download speeds. This Declaration has been prepared in support of the foregoing Formal Complaint.

8. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.



Edward G. Taylor



Date

*Before the*  
**Federal Communications Commission**  
**Washington, DC 20554**

In the matter of

Ray Taylor

v.

AT&T Corp.  
One AT&T Way  
Bedminster, NJ 07921

Proceeding Number \_\_\_\_\_  
File No. EB- \_\_\_\_\_ -

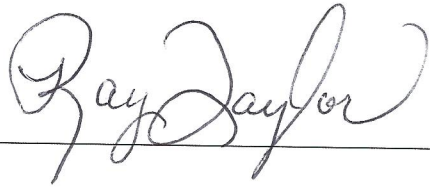
**DECLARATION OF RAY TAYLOR**

1. My name is Ray Taylor, I live at 2183 Bassett Street, Detroit, Michigan 48217
2. I am a residential customer of AT&T. I live in a residence that has been serviced by AT&T including by it broadband service since 1998.
3. I would prefer to purchase faster access to the Internet. I, and members of my household, have attempted to obtain faster high speed broadband service from AT&T but was not able to purchase it. Upon contacting an AT&T representative by telephone at the number advertised locally for high speed internet access, we were told that our home is not eligible to receive the service.
4. I am harmed by the failure of AT&T to offer me faster speed broadband service. As a student, I am incapable of accessing online resources, my college's and professor's pages for students, to register for courses and seek internship opportunities. When looking for a job, it is virtually impossible to have the applications load up in a timely fashion, and it is painstakingly

slow for each page to load, rendering the job search process futile. In a community with high unemployment and impoverishment rates, it is very critical that for me to be able to search for jobs online. A lot of employers now only accept applications via online means.

5. This Declaration has been prepared in support of the foregoing Formal Complaint.

6. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

A handwritten signature in cursive script, reading "Ray Taylor", is written over a horizontal line.

Ray Taylor

\_\_\_\_\_

Date

*Before the*  
**Federal Communications Commission**  
**Washington, DC 20554**

In the matter of	)	
	)	
Joanne Elkins, Hattie Lanfair,	)	
Rachelle Lee	)	
Complainants,	)	Proceeding Number 17-223
	)	File No. EB-17-002
v.	)	
	)	
AT&T Corp.	)	
Defendant.	)	

**DECLARATION OF EXPERT WITNESS**  
**BRIAN E. WHITACRE**

1. My name is Dr. Brian Whitacre. I am a professor and extension economist in the agricultural economics department at Oklahoma State University.

2. I hold a Ph.D. in economics from Virginia Polytechnic Institute. For the last 11 years, my academic position has focused on what technology can mean for domestic economic development. A heavy portion of my research (and outreach) is dedicated to the economic impacts associated with broadband technology. Therefore, I am well-versed in the data and software tools used to explore broadband provision across the United States. Attached is my resume detailing my professional expertise.

3. I have reviewed in detail and am familiar with the contents of the Connect Your Communities and National Digital Inclusion Alliance report titled, *AT&T's Digital Redlining*, which focused on AT&T's broadband provision in the city of Cleveland. Subsequent analysis



considered AT&T's broadband provision in other cities, including Detroit. In my professional opinion, the NDIA report (and subsequent analysis) is accurate and has been conducted according to the professional standards of my profession. As part of my work on this project, I was able to replicate (and extend upon) the Detroit findings using the publicly available datasets cited (FCC Form 477 from June 2016; Census poverty rates from the 2011-2015 ACS).

4. The analysis for Detroit demonstrates that AT&T has withheld fiber-enhanced broadband improvements from most Detroit neighborhoods with high poverty rates, relegating them to Internet access services which are vastly inferior to the services enjoyed by their counterparts nearby in the higher-income Detroit suburbs.

### *Background*

5. In 2016, Connect Your Community and National Digital Inclusion Alliance learned that residents of many Cleveland neighborhoods were being declared ineligible for AT&T's "Access" discount rate program, solely because they couldn't get AT&T connections at the 3 Mbps download speed which was then the program's minimum requirement. Similar situations were found in Detroit and other cities across the nation.

6. AT&T Access offers discounted broadband service to low-income households, and was adopted by AT&T as a voluntary condition as part of Federal Communication Commission approval of its merger with DirecTV.

7. In order to further explore the quality of service offerings by AT&T in Cleveland, CYC and NDIA undertook an analysis of broadband infrastructure deployment in Cleveland using census block level data submitted to the Federal Communications Commission by AT&T

via FCC Form 477. This report was published in March 2017. Several months later, NDIA performed similar analysis for other cities, including Detroit. Although a full NDIA report does not exist specifically for Detroit, this declaration follows the process of the Cleveland NDIA report to demonstrate that the same basic pattern holds. The evidence laid out below suggests that AT&T systematically provided lower levels of broadband access to high-poverty neighborhoods than they did in higher-income locations.

### *Data Source and Study Goals*

8. The FCC's Fixed Broadband Deployment Data is based on Form 477 reports gathered every six months from all regulated Internet Service Providers. It is released to the public on the FCC website six months to a year later. Among other things, the Form 477 deployment data includes individual companies' own accounts of the broadband technology they are using to deliver residential service in each Census block, and the "Maximum Advertised Download Speed" (as well as Upload Speed) for each such technology in that block. These speeds are reported in megabytes per second (mbps).

9. In the case of AT&T, Form 477 block data shows where the company is offering 18, 24, 45 or 75 mbps download speeds via fiber-enhanced VDSL service, or even gigabit speeds via Fiber To The Home (FTTH), and where their Internet service is limited to slower speeds (often much slower) because it is still delivered over copper wires from a "central office" that may be miles away, using a version of old-style ADSL technology called ADSL2.

10. The Census block data in Form 477 lists the maximum speed of as few as one or two addresses in a block. Therefore if a Census block is listed as ADSL2 "Maximum Advertised

Download Speed” of 18 mbps, it is impossible to assume that every household in that block can get that speed.

11. On March 3, the FCC posted its latest round of Census block broadband deployment data, drawn from providers’ Form 477 reports for June 2016. The CYC/NDIA analysis is based on that most recent release, including that performed for Detroit. The maps and data included in this declaration also use this data.

12. CYC and NDIA undertook this analysis to learn what the new Form 477 Census block data tell us about three questions: 1) Where has AT&T invested in providing its mainstream Internet speeds and video services to residents, and where has it chosen not to do so? 2) How does AT&T’s deployment of FTTH/VDSL service compare to the distribution of high poverty areas, especially in Detroit? 3) Where are AT&T’s “maximum advertised download speeds” still provided by ADSL2 technology – i.e. old-style copper wire from a “central office” – and what are those speeds, especially in the Census blocks farther away from the central offices serving them?

13. To address the first two questions, CYC and NDIA mapped all the Census blocks in Wayne County where AT&T’s Form 477 data indicates it was able to provide Internet access via VDSL technology to at least one household, at a maximum download speed of 18 mbps or more, in June 2016. (CYC and NDIA included a couple of blocks where the data show FTTH service with 1 Gbps download speeds.) Then CYC and NDIA overlaid a map of all the Census block groups in the county where 35% of residents had incomes below the poverty line according to the most recent Census data available (from 2011-2015). The analysis in this declaration replicated this process.

14. The specific steps taken to obtain the broadband deployment data were:

- a) Download the state-level (Michigan) June 2016 Fixed Broadband Deployment Form 477 data from: <https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477>
- b) Remove all non-AT&T observations
- c) Remove all non-Wayne County observations (FIPS code 26163)
- d) Generate a “maximum speed offered” by Census Block. Many Census blocks include multiple listings for AT&T, with each designating a speed that is available to customers. What is ultimately needed is the maximum speed AT&T offers for each Census block. This can be done by generating a maximum speed offered by Census block, and then dropping all non-optimal observations for that block. The result is a single observation per Census block that contains the maximum download and upload speeds available.
- e) The resulting data is attached to this declaration (Cuyahoga\_Co\_AT&T\_June2016.xls)

15. The specific steps taken to obtain the Census Poverty data were:

- a) Visit the “advanced search” version of the Census’ American Fact Finder, available at: <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>
- b) Select “Block groups” under “Geographies”
- c) Select State (Michigan) and County (Wayne). Select “Add to your selections”
- d) In the Topic Search bar at the top of the page, type “Poverty”
- e) Select ID B17021, “Poverty Status of Individuals In the Past 12 Months by Living Arrangement”, 2015 ACS 5-year estimates.
- f) Download the resulting table into Excel

- g) Create a new “% in Poverty” by dividing the number of households with income below poverty by the total number of households.
- h) Counties with poverty rates over 35% can be assigned by assessing the value of the “% in Poverty” column.
- i) The resulting data is attached to this declaration (Wayne\_Co\_Block\_Groups\_Poverty\_ACS\_11-15.xls). It can be meshed with the Census block-level Form 477 data by merging according to the geographical ID (the first 12 digits of the 15-digit census block ID dictate the block group each observation belongs to).

#### *AT&T home broadband technologies*

16. In general, AT&T offers home Internet, “cable” TV programming and IP phone services using one of three delivery technologies: (1) Fiber To The Home, (2) Fiber To The Node / VDSL, and (3) ADSL2.

17. The newest and fastest of the three, not yet available in most of the Detroit market but coming on rapidly in other metropolitan areas, is Fiber To The Home (FTTH) – now branded as “AT&T Fiber”. As the name suggests, this is very fast service (typically up to 1,000 mbps, i.e. 1 gbps) delivered by optical fiber all the way to the customer premises. In Wayne County, only 64 out of the 29,100 Census blocks that AT&T provides service to have FTTH service. The average poverty rate in the Census blocks with FTTH service is 5.5%, compared to the county average of 26.5%.

18. The current mainstream AT&T home network technology, built out in Michigan and other markets between 2007 and 2014, is Fiber To The Node (FTTN). Data travels via fiber

to a “Video Ready Access Device” (VRAD) in a wiring cabinet in a neighborhood, often on a tree lawn or similar location, and then from the VRAD to the customer premises via a copper loop. AT&T’s FTTN system uses an advanced digital subscriber line technology called “Very-high-bit-rate digital subscriber line” or VDSL. VDSL technology can transmit data downstream and upstream simultaneously, at speeds of 100 mbps or more. AT&T’s Form 477 data lists “maximum advertised download speeds” for VDSL service of 18, 24, 45, and 75 mbps.

19. Where AT&T hasn’t upgraded its service to either FTTH or FTTN, new accounts are served using an older technology called “asymmetric digital subscriber line 2” (ADSL2 or ADSL2+). Data travels to an AT&T “central office” via fiber optics, is run through a “Digital Subscriber Line Access Multiplexer” (DSLAM) there, and then is sent over a copper loop to the customer premises – often a distance of two to three miles or more. The ADSL2 technology used by AT&T has a maximum download speed of 18 to 24 mbps near the DSLAM, but drops rapidly to 6 mbps, 3 mbps or less at distances above a mile.

20. I and the study authors understand, and believe to be true, that AT&T categorizes its “advertised speeds” as follows. AT&T’s three lowest advertised speed tiers — and price levels — are now “up to 3 mbps”, “up to 6 mbps”, and “up to 24 mbps.” A service whose maximum speed is 768 kbps is considered “up to 3 mbps” under AT&T’s rubric. If a customer’s available download speed is really 12 mbps, under AT&T’s rubric, that service is considered “up to 24 mbps” on that customer’s bill.

### *Consumer Use of Broadband and Benefits of Broadband Competition*

21. Consumers view ADSL and VDSL2 as services which meet the same needs. Both are broadband services used to reach the Internet, stream video, and other similar needs.

Both offerings also compete with other providers of broadband services, such as wired services offered by multichannel video programming distributor, *i.e.*, traditional cable operators.

22. Wireless broadband services, while they provide some similar access to broadband services, are qualitatively different from wired services. Indeed, the FCC's own 2016 Broadband Progress Report notes, "We find today that fixed and mobile broadband are often used in conjunction with one another and, as such, are not functional substitutes." (p. 6) The report also finds that, "fixed and mobile broadband are currently tailored to serve different consumer needs." (p. 6) Additionally, the Government Accountability Office (GAO) clearly differentiates between mobile and fixed Internet access in their 2014 report on broadband Internet, highlighting the faster data transfer for fixed connections and potential congestion issues for mobile. Academic research on the subject agrees, with Lee et al. (2011) finding that "mobile broadband service is a complement to fixed broadband service."

23. Even if mobile network improvements over time allow for similar fixed and mobile download speeds, the customer costs and experiences are not comparable. Wireless services are typically subject to data caps or limitations after a particular data threshold is met, and typically must be purchased for each device used, rather than shared like wired services. They also suffer noticeable reductions in speed and quality if multiple devices share the same data stream, such as through a mobile wifi hotspot. Therefore, mobile services are often much more expensive than wired services and do not offer as great a value, particularly for low-income consumers. According to AT&T's website, their fixed broadband plans start at \$40 / month for 50 mbps (where available) and 1 Terabyte of data (1,000 GB). Alternatively, AT&T's mobile broadband for the same price (\$40) comes with only 3 GB of data. On a cost-per-GB comparison, mobile is over three hundred times more expensive (\$.04 / GB for fixed, \$13 / GB

for mobile). Higher-data mobile packages cost more, such as their \$90 / month plan for 16 GB. Even AT&T's unlimited mobile data plan (\$100 / month) notes that "AT&T may slow speeds after 22 GB of data usage." For prepaid mobile data plans, which are commonly used by low-income customers, AT&T charges \$65 / month for unlimited data (which again may be throttled after 22 GB) but notes that speeds are limited to a maximum of 3 mbps. Thus, it is unrealistic to claim that a mobile AT&T broadband subscription can serve the same purpose as a fixed one.

24. The lack of competitive fiber-based products reduces competition in the provision of broadband services. Therefore, communities and individual customers who are limited to fixed broadband service offerings from only a single provider (for example, a cable provider) generally face higher prices and lower quality than they would if more than one provider of services were available. The problematic nature of limited broadband competition is firmly established in the economic literature.

#### *Analysis*

25. The analysis, methodology, and maps below are specific to Detroit, but follow the general outline established in the NDIA's study titled *AT&T's Digital Redlining* (which was focused on Cleveland). The original post on NDIA's website that focused on Detroit (dated Sep. 6, 2017) is attached and incorporated to this declaration by reference.

26. As detailed below, the data offers clear evidence that AT&T has withheld the standard product offering for most suburbs- its fiber-enhanced "Fiber To the Node" VDSL infrastructure ("FTTN") – from the overwhelming majority of census blocks with individual poverty rates above 35%. As a consequence, residents of these neighborhoods: suffer uneven, often severely limited Internet access , in many cases 3 mbps downstream or less, and also lack

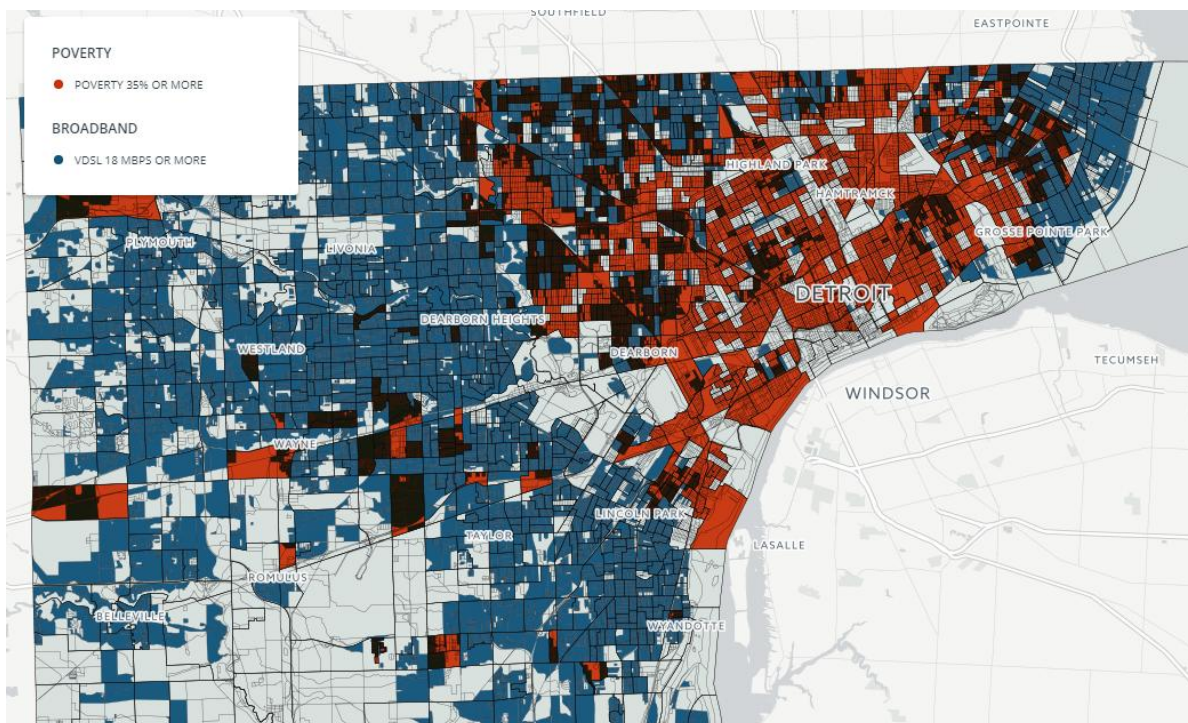


access to AT&T's competitive fiber-enabled video service and the benefits such competition and service would bring.

### *Maps, Data Analysis, and Findings*

27. To support these conclusions this declaration analyzes data and provides a series of maps and statistics demonstrating the following:

*Map 1: AT&T's FTTN / VDSL (18 MBPS or more) Network Coverage in Wayne County and Block Groups with 35% or Greater in Poverty ([Map 1 Link](#)).*



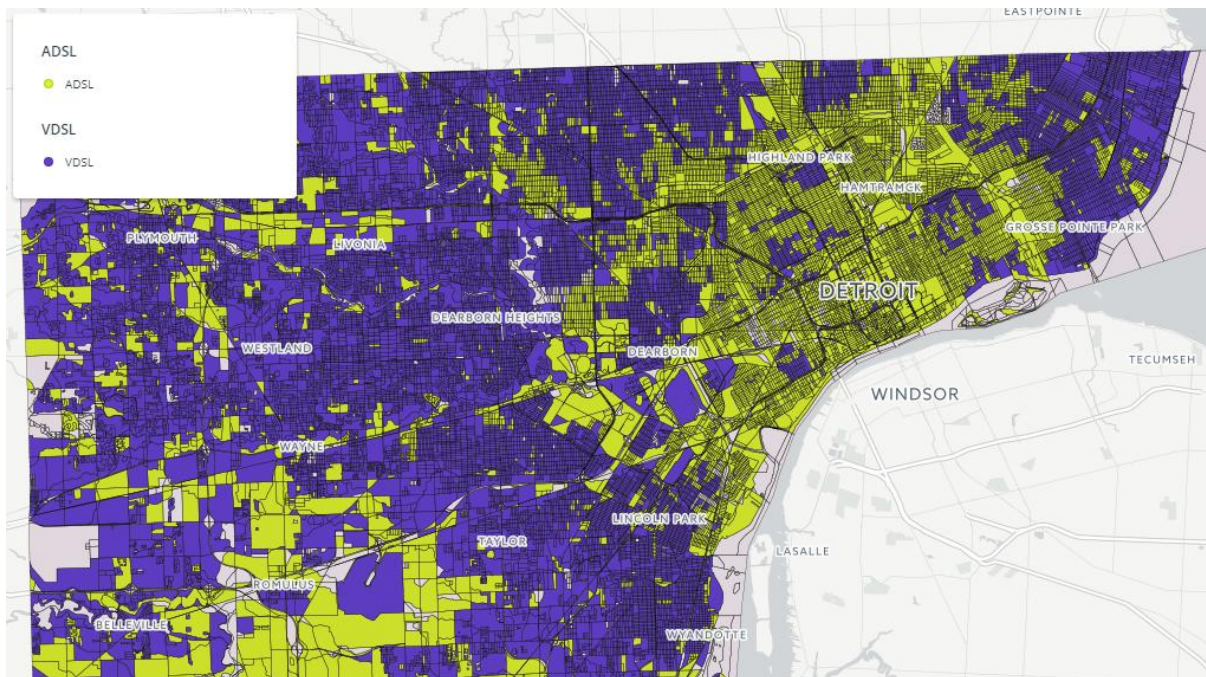
28. Out of the 29,100 Census blocks served by AT&T, 9,954 (34%) have poverty rates of 35% or more. AT&T's FTTN / VDSL network covers most of Wayne County but not most Census blocks in Detroit, especially those in high-poverty neighborhoods (Map 1). As Table 1 below demonstrates, this is also shown by the distribution of VDSL or ADSL across

high-poverty Census blocks. VDSL was only provided to 41% of Census blocks with high levels of poverty, compared to 74% of non-high poverty Census blocks. Similarly, the high-poverty blocks were more than twice as likely to receive ADSL (58% vs. 25%).

*Table 1: Percentage of Wayne County Census Blocks served by ADSL, VDSL, or FTTH (out of all blocks served by AT&T)*

	<b>Pov 35% +</b>	<b>Other</b>
ADSL	58.68%	25.23%
VDSL	41.32%	74.43%
FTTH	0.00%	0.34%
	100.00%	100.00%

*MAP 2: AT&T Provision of ADSL and VDSL service in Wayne County and Detroit ([Map 2 Link](#))*



29. Most of Wayne County’s suburban communities are fully covered by AT&T’s mainstream FTTH/VDSL service. Most of the city of Detroit is not.

30. The June 2016 Form 477 data lists 29,100 Census blocks in Wayne County served by AT&T with ADSL2, VDSL, or FTTH service. Of the 13,055 blocks located in the city of Detroit, in only 41% (5,406) is the Maximum Advertised Download Speeds provided by VDSL or FTTH. Of the 16,045 blocks in the rest of the county, the FTTH/VDSL percentage is nearly double (81%). Similarly, 59% of Detroit Census blocks are limited to ADSL service, which is three times the percentage seen in the remaining Wayne County Census blocks (19%). Table 2 provides more information about the breakout between Detroit and the rest of Wayne County, including the percentage of Census blocks with 18mbps download speed available to them and average poverty rates.

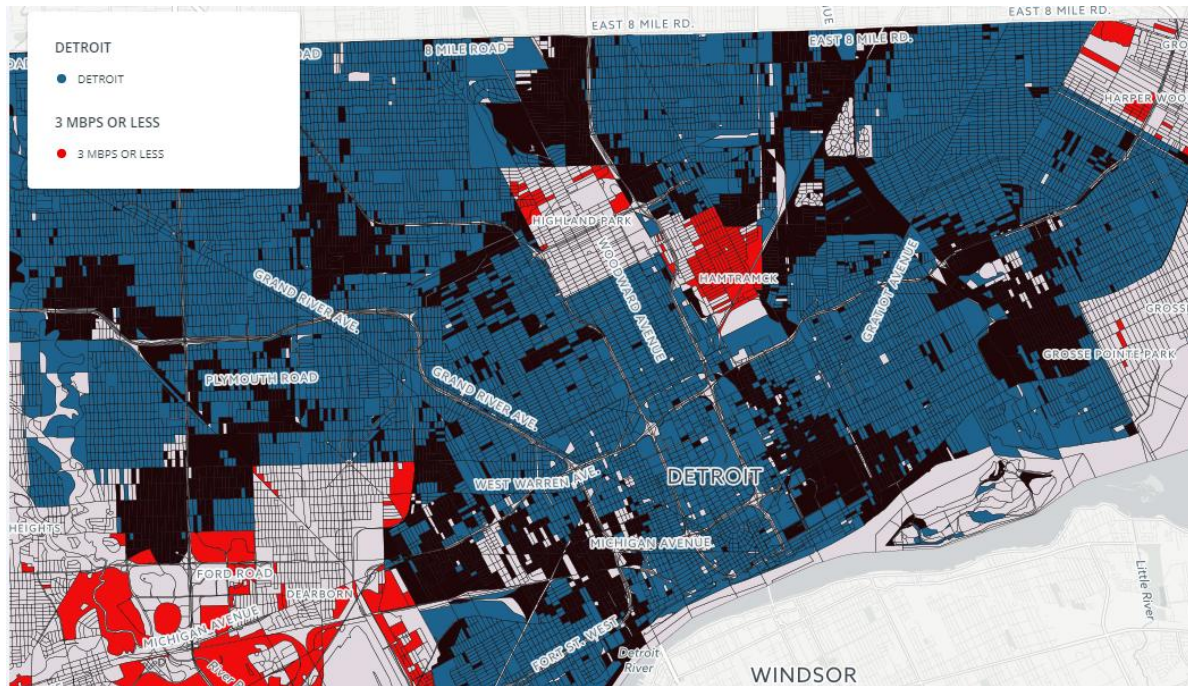
*Table 2: Percentage of Detroit and Rest of Wayne County Census Blocks Served by ADSL / VDSL (and other characteristics)*

	<b>Detroit</b>	<b>Rest of County</b>
ADSL	58.59%	18.84%
VDSL	41.41%	80.76%
% with 18mbps available	53.80%	80.50%
Avg. Poverty Rate	40.28%	15.27%

31. There is a glaring correlation between areas where AT&T has not invested in FTTN service and areas of high poverty. Even *within* Detroit Census blocks, there is a differentiation to the service provided across poverty lines. 50% of Detroit Census blocks that do not meet the 35% poverty threshold have VDSL service available, compared to only 36% of Detroit blocks classified as high-poverty (data not shown in table).



*MAP 3: Detroit Census Blocks with Maximum AT&T Wireline Internet Speeds of 3mbps or Less, June 2016 ([Map 3 Link](#))*



32. Where AT&T has not deployed FTTN technology, home Internet speeds delivered by the ADSL2 network vary widely depending on proximity to a central office. Maximum download speeds of 3 Mbps or less are common. Map 3 shows the Detroit Census blocks with maximum AT&T wireline Internet speeds of 3 Mbps or less, for June 2016. As this map (and Table 3 below) demonstrate, over 21% of Detroit Census blocks were reported by AT&T to have maximum residential download speeds of 3 Mbps or less. The comparable percentage for the rest of Wayne County was 9%. A similar story can be told for high-poverty (35% or more) Census Blocks within the county: 22% are limited to speeds of 3 MBPS or less, more than double the rate found in the rest of the county.

*Table 3: Percentage of Wayne County Census Blocks Served by AT&T With Low Download Speeds, by Location and High-Poverty Status*

	<b>Detroit</b>	<b>Rest of County</b>
1.5MBPS Or Less	15.87%	8.02%
3MBPS Or Less	21.10%	9.42%

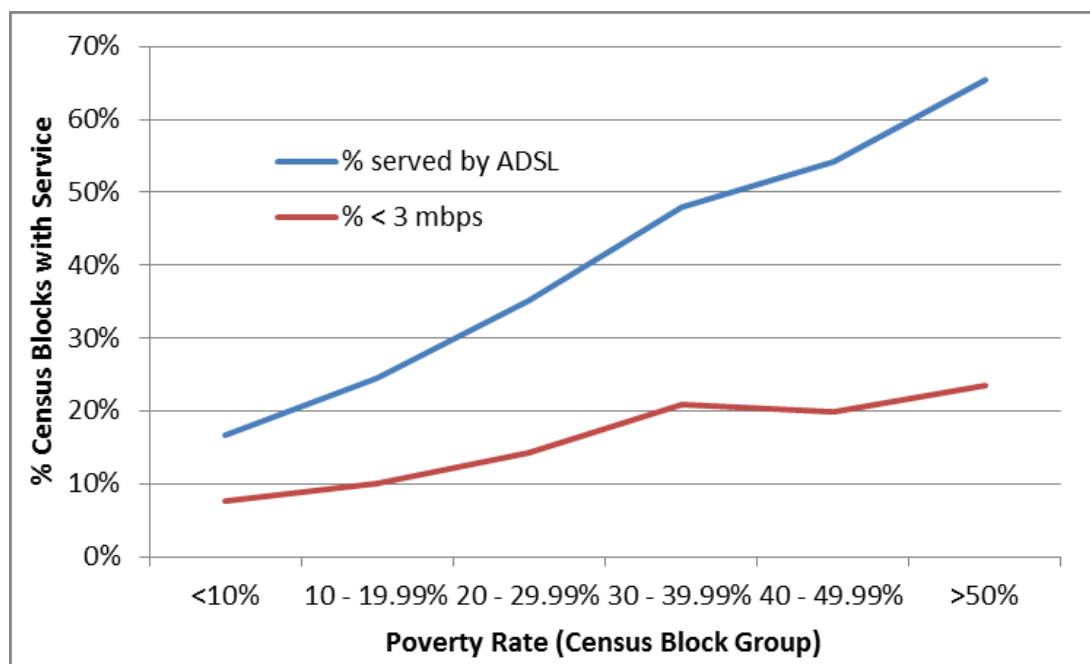
  

	<b>Pov 35% +</b>	<b>Rest of County</b>
1.5MBPS Or Less	16.87%	8.76%
3MBPS Or Less	22.01%	10.84%

The above analysis has mostly focused on high-poverty counties (rates of 35% or more).

However, when the analysis is extended to break out the Wayne County Census blocks into more detailed poverty rate groupings, a clear trend emerges (Figure 1).

*Figure 1: Percentage of Wayne County Census Blocks served by AT&T that are limited to ADSL and <3 MBPS Service, by Poverty Rate*



For the least impoverished blocks (those with less than 10% in poverty), only 16% are limited to ADSL service, and only 7.7% are offered a download maximum of 3 mbps. As the poverty rate grows, however, so does the percentage limited to ADSL and to 3 mbps. Census blocks with poverty rates of over 50% are more than 3 times as likely to be limited to both ADSL service (65%) and 3 mbps service (24%).

### *Conclusions*

33. The analysis shows a clear and troubling pattern: A pattern of long-term, systematic failure to invest in the infrastructure required to provide equitable, mainstream Internet access to residents of the central city (compared to the suburbs) and to lower-income city neighborhoods. Specifically, AT&T has chosen not to extend its “FTTN” VDSL infrastructure – which is now the standard for most Wayne County suburbs and other urban AT&T markets throughout the U.S. – to the majority of Detroit Census blocks, including the overwhelming majority of blocks with individual poverty rates above 35%.

34. The study’s results provide clear evidence that AT&T has withheld fiber-enhanced broadband improvements from most Detroit neighborhoods with high poverty rates.

35. The Detroit neighborhoods that did not receive VDSL investments have been relegated to an older, slower transmission technology called ADSL2, resulting in significantly slower Internet access speeds than AT&T provides to middle-income city neighborhoods as well as most suburbs.

36. As a result, their residents are left with: 1) uneven, often severely limited Internet access – in many cases 3 Mbps downstream or less; and 2) no access to the competitive fiber-enabled video service that AT&T promised communities in exchange for “cable franchise reform”, i.e. the elimination of municipal cable franchising, in Michigan in 2007.

37. Because the patterns revealed by this analysis result from a decade of deliberate infrastructure investment decisions, I agree with NDIA and CYC's conclusion that they constitute strong evidence of a policy and practice of "digital redlining" by AT&T — *i.e.* income-based discrimination against residents of lower-income urban neighborhoods in the types of broadband service AT&T offers, and in the company's investment in improved service.

38. This Declaration has been prepared in support of the foregoing Formal Complaint.

39. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

40. I certify that I was able to replicate the NDIA findings for Detroit using the publicly available data referenced above.

41. I declare under penalty of perjury that the foregoing is true and correct.

42. Executed on September 19, 2017.

A handwritten signature in black ink, appearing to read "R. B. Whinn". The signature is written in a cursive, flowing style.

EXPERT SIGNATURE

**BY COURIER**

April 24, 2017

Randall Stephenson  
Chairman, CEO and President  
AT&T  
208 S. Akard Street  
Dallas, TX 75202

Stacey Maris  
Senior Vice President and Secretary  
AT&T  
208 S. Akard Street, Suite 3241  
Dallas, TX 75202

Dear Mr. Stephenson and Ms. Maris:

Re: Redlining

We represent broadband consumers in Cleveland, Ohio (“Cleveland Broadband Consumers”) who have been and continue to be irreparably injured by AT&T’s deliberate pattern and practice of offering critical fast home broadband service disproportionately to residents of high-income zip codes, while offering only much slower and inherently inferior service to residents of low-income zip codes.

This invidious practice was copiously documented by a National Digital Inclusion Alliance (NDIA) report, “AT&T’s Digital Redlining” (March 10, 2017) (<https://digitalinclusion.org/blog/2017/03/10/atts-digital-redlining-of-cleveland/>) (last visited April 18, 2017). Excerpts of the report summary are set out below (emphasis in original):

A mapping analysis of Federal Communications Commission broadband availability data, conducted by Connect Your Community and the National Digital Inclusion Alliance, strongly suggests that **AT&T has systematically discriminated against lower-income Cleveland neighborhoods in its deployment of home Internet and video technologies over the past decade.**

Our analysis, based on newly released FCC Form 477 Census block data for June 2016, provides clear evidence that AT&T has withheld fiber-enhanced broadband improvements from most Cleveland neighborhoods with high



poverty rates – Hough, Glenville, Central, Fairfax, South Collinwood, St. Clair-Superior, Detroit-Shoreway, Stockyards and others.

This analysis is part of a six-month effort that began when CYC and NDIA learned that residents of many Cleveland neighborhoods were being declared ineligible for AT&T's "Access" discount rate program, solely because they couldn't get AT&T connections at the 3 mbps download speed that was then the program's minimum requirement.

After analyzing previous FCC Form 477 data releases, along with City construction permits and other information, we've come to believe that the ultra-slow AT&T Internet speeds available to those Access applicants reflect a larger problem: AT&T's failure to invest to upgrade most of its Cleveland network to the company's mainstream technology.

Specifically, AT&T has chosen not to extend its "Fiber To the Node" VDSL infrastructure – which is now the standard for most Cuyahoga County suburbs and other urban AT&T markets throughout the U.S. – to the majority of Cleveland Census blocks, including the overwhelming majority of blocks with individual poverty rates above 35%.

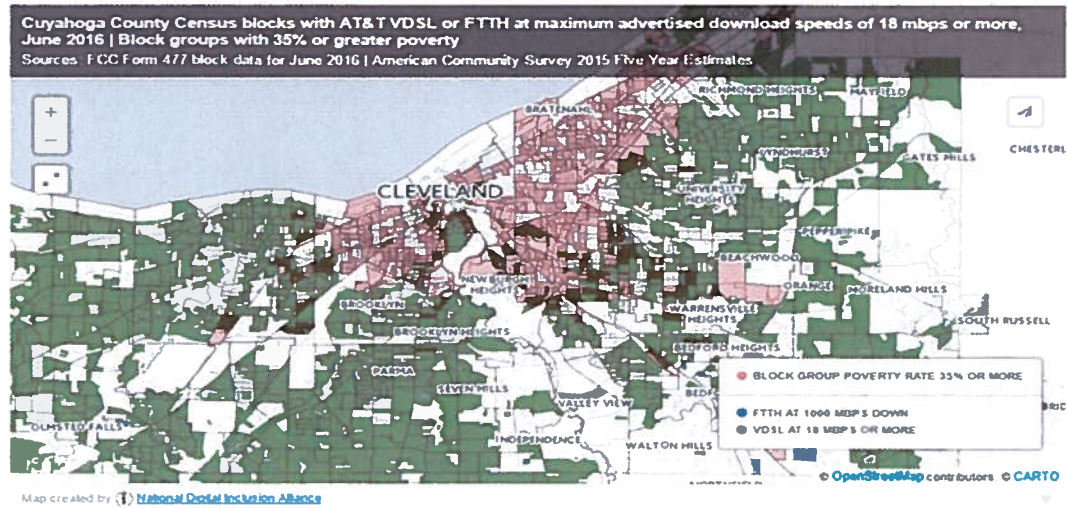
These neighborhoods have been relegated to an older, slower transmission technology called ADSL2, resulting in significantly slower Internet access speeds than AT&T provides to middle-income city neighborhoods as well as most suburbs.

As a result, their residents are left with uneven, often severely limited Internet access – in many cases 3 mbps downstream or less; and no access to the competitive fiber-enabled video service that AT&T promised communities in exchange for "cable franchise reform", *i.e.* the elimination of municipal cable franchising, in Ohio in 2007.

Because the patterns revealed by this analysis result from a decade of deliberate infrastructure investment decisions, NDIA and CYC believe they constitute strong evidence of a policy and practice of "**digital redlining**" by AT&T – *i.e.* income-based discrimination against residents of lower-income urban neighborhoods in the types of broadband service AT&T offers, and in the company's investment in improved service.

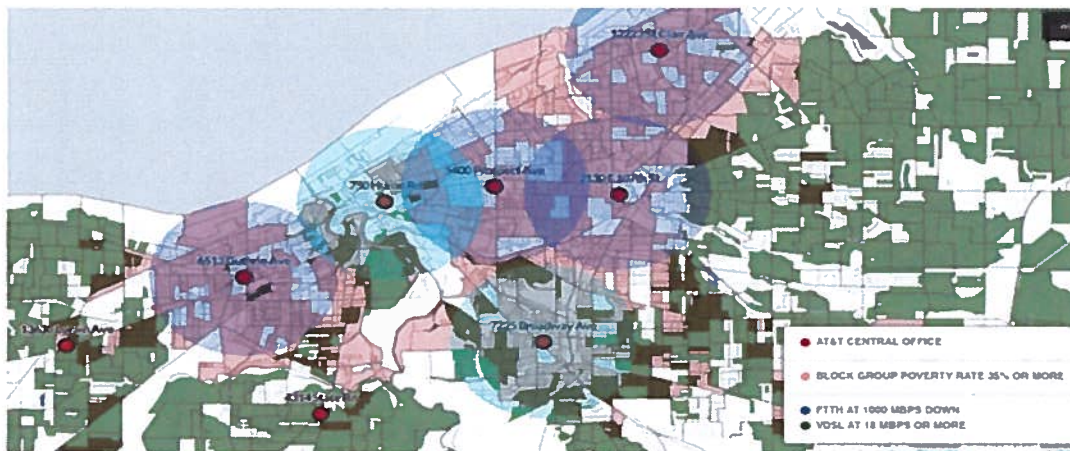
The NDIA study's maps are stunning:

**MAP 1: AT&T's Fiber To The Node network covers most of Cuyahoga County but not most Census blocks in Cleveland, especially those in high-poverty neighborhoods.**

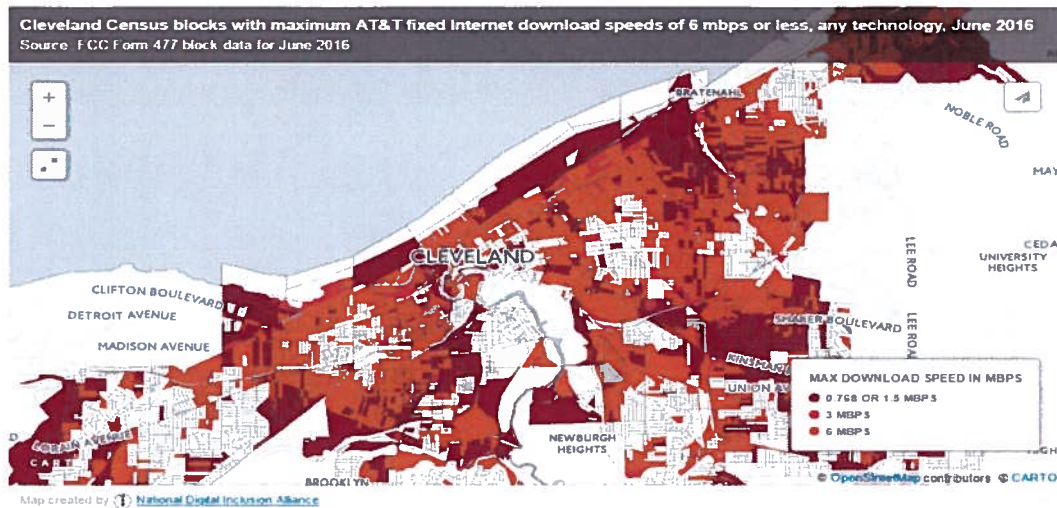


**MAP 3: AT&T apparently chose not to install Fiber To The Node infrastructure anywhere in the areas served by its four Cleveland central offices with the greatest concentration of high-poverty neighborhoods.**

The absence of FTTH in these lower-income neighborhoods, and the overall disparity in FTTH deployment between Cleveland and the suburbs, can be traced largely to AT&T's failure to deploy FTTH anywhere in the service areas of four "central offices" (COs, or wire centers) with large lower-income customer bases: those at 6513 Guthrie, 5400 Prospect, 2130 East 107th, and 12223 St. Clair.



MAP 5: Cleveland Census blocks with maximum AT&T wireline Internet speeds of 6 mbps or less, June 2016



See <https://digitalinclusion.org/blog/2017/03/10/atts-digital-redlining-of-cleveland/> (last visited April 19, 2017); see also [https://drive.google.com/file/d/0B62ag-I\\_FGHrbTYtMGdK0XZ4NmM/view](https://drive.google.com/file/d/0B62ag-I_FGHrbTYtMGdK0XZ4NmM/view) (last visited April 20, 2017).

They are reminiscent of maps that depicted redlining by banks, insurance companies, and ambulance services two generations ago. See <http://connectyourcommunity.org/atts-digital-redlining-of-cleveland-report/> (last visited April 18, 2017).

In his first major address, delivered at Carnegie Mellon University March 15, no less an authority than the Chairman of the Federal Communications Commission declared that the study “fiber was much less likely to be deployed in the low-income neighborhoods” (see <https://www.fcc.gov/document/chairman-pai-bringing-benefits-digital-age-all-americans> (last visited April 18, 2017)).

In response to the NDIA study, the citizen group Public Knowledge, one of the nation’s leading authorities on universal service, declared that:

Digital redlining and denying essential connectivity to low-income communities is contrary to America’s longstanding commitment to universal service and our values as a nation...These bypassed low-income neighborhoods have no options for high-speed fixed broadband service and must settle for lower speeds. As a result, families in these areas are more likely to rely on mobile broadband, which is significantly more expensive on a per GB basis.

While it is essential that broadband providers upgrade and modernize their networks to support the increasing demands of consumers and businesses, it is also imperative that they remain committed to the principles of universal service and the Network Compact.



For generations, it has been the policy of the United States that the benefits of essential connectivity should be available to all Americans, and there has long been overwhelming bipartisan consensus that part of ensuring universal service is making certain that communications services are both available and affordable. Unfortunately, it appears that those values are currently missing in AT&T's deployment in Northeastern Ohio.

*See* <https://www.publicknowledge.org/press-release/public-knowledge-responds-to-ndia-report-indicating-att-discrimination-in-o> (last visited April 18, 2017).

AT&T's March 12, 2017 response to the NDIA Study failed to confront the issue of redlining. Stating that the company had invested \$325 million in broadband infrastructure in Cleveland (2013-2015) and that it was "investing in technologies that will mitigate some of the infrastructure limitations" at some unspecified point in the future, AT&T virtually conceded that it redlined. *See* <http://www.news5cleveland.com/news/local-news/oh-cuyahoga/atts-digital-redlining-of-cleveland-neighborhoods> (last visited April 18, 2017).

Whether or not AT&T acted with malicious intent to hurt the poor is quite irrelevant. From the vantage point of the residents of low-income zip codes, their AT&T broadband service deficiency is no different than if they were struck by an errant AT&T bucket truck on the highway, or deprived of AT&T telephone service because the aging copper wires failed in a storm. Whether or not AT&T set out deliberately to injure them, they were injured nonetheless.

As a common carrier for over 100 years, AT&T is accustomed to providing equal service to all consumers. Thus it is surprising that AT&T would so brazenly offer unequal service to the citizens of Cleveland. What is especially troubling is that in 2007, AT&T took the lead in persuading the Ohio General Assembly to eliminate municipal franchising of cable television providers by promising a new era of cable competition, according to NDIA. *See* <http://www.news-herald.com/article/HR/20070924/NEWS/309249985> (last visited April 18, 2017). Municipal franchising would have prevented redlining, and in 2007 AT&T promised never to redline. But now it appears to have redlined Ohio's largest city.

Fast broadband is a necessity in today's society, as AT&T has long contended and accurately so. Its March 12 response to the NDIA study began by proclaiming that "[a]ccess to the internet is essential." *See* <http://www.news5cleveland.com/news/local-news/oh-cuyahoga/atts-digital-redlining-of-cleveland-neighborhoods> (last visited April 19, 2017). AT&T often makes this point when seeking regulatory relief. *See, e.g.,* AT&T Comments, Lifeline and Linkup Reform and Modernization, FCC WC Docket 11-42 (August 31, 2015), p. 2 ("broadband Internet access service has eclipsed voice service as the critically

important tool in everyday life”) (see <https://ecfsapi.fcc.gov/file/60001223938.pdf> (last visited April 19, 2017)). And AT&T is correct. In today’s society, broadband is as vital to survival as health care, education and employment. Indeed broadband is the vehicle by which consumers most readily access each of those independently essential attributes of life.

We are studying these threshold questions:

- Does AT&T’s behavior in Cleveland, and any other cities where similar practices may exist, violate 42 U.S.C. §1981’s command that “[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts ... as enjoyed by white citizens”?
- Does AT&T’s behavior in Cleveland trigger an obligation of the FCC, and of the Ohio Public Service Commission, under Section 706 of the Telecommunications Act of 1996, to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans” by restraining AT&T from continuing to redline and supervising AT&T’s transition to providing equal service to all Cleveland consumers?
- If, as NDIA has alleged, AT&T secured, from the State of Ohio, regulatory relief premised on assurances that AT&T would not redline, but thereafter AT&T redlined, should the State of Ohio reverse itself?
- Is AT&T’s behavior relevant to its FCC character qualifications or its DOJ competitive qualifications to complete its merger with Time Warner, Inc.?
- Should broadband consumers in Cleveland and elsewhere who find AT&T’s practices morally offensive stop purchasing goods and services from AT&T?

We would appreciate an opportunity to meet with you immediately discuss these matters. Further, as an AT&T shareholder, Mr. Parks respectfully requests an opportunity to address the Board of Directors at AT&T’s April 28, 2017 shareholders’ meeting. He will limit his remarks to the question of how AT&T’s broadband deployment in Cleveland impacts shareholder interest because redlining undermines brand loyalty and thus diminishes sales while increasing churn; and universal fast broadband lifts the poor into the middle class, thus turning loyal but low-spending customers into loyal high-spending customers.

Specifically, Mr. Parks will recommend that an appropriate committee of the board be directed to work collaboratively with Cleveland Broadband Consumers to develop

a plan that will promptly and permanently put an end to even the appearance of redlining by AT&T. Should this collaborative approach be rejected, Cleveland Broadband Consumers will be compelled to use whatever lawful means are available to them to seek redress.

This matter came to light after the November 11, 2016 deadline for submission of stockholder proxy materials to be considered at the Annual Meeting. It is, however, of urgent and timely importance to the shareholders. Its resolution cannot wait until 2018. The Board is empowered to hear the concerns of the shareholders and take remedial steps now. *See* AT&T Bylaws, Article I, Sections 8(b) and (c).

We wish to share this letter with the members of the AT&T Board of Directors. To accomplish that, we respectfully request that you transmit the letter to each director via internal AT&T mail to ensure that it is properly and immediately received.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Parks', with a long, sweeping horizontal line extending to the right.

Daryl D. Parks, Esquire  
Parks & Crump, LLC  
240 N. Magnolia Drive  
Tallahassee, FL 32301  
(850) 224-6400

cc: AT&T Board of Directors:

- o Samuel DiPiazza
- o Richard Fisher
- o Scott Ford
- o Jimmy Hayes
- o Glenn Hutchins
- o William Kennard
- o Joe Madonna
- o Michael McAllister
- o John McCoy
- o Beth Mooney
- o Joy Roche
- o Matthew Rose
- o Cynthia Taylor
- o Laura Tyson
- o Geoff Yang

## State of Ohio

- Governor John R. Kasich
- Clifford A. Rosenberger, Speaker of the House
- House of Representatives, The Ohio Legislature
- Larry Obhof, Senate President  
Senate, The Ohio Legislature
- Fred Strahorn, Minority Leader  
House of Representatives, The Ohio Legislature
- Joseph Schiavoni, Minority Leader  
Senate, The Ohio Legislature

## Members of Congress:

- Hon. Greg Walden  
Chairman, Committee on Energy & Commerce
- Hon. Marsha Blackburn  
Chairman, Subcommittee on Communications and Technology  
Committee on Energy and Commerce
- Hon. Frank Pallone  
Ranking Member, Committee on Energy and Commerce
- Hon. Michael Doyle  
Ranking Member, Subcommittee on Communications and Technology  
Committee on Energy and Commerce
- Hon. Bobby Rush  
Member, Subcommittee on Communications and Technology  
Committee on Energy and Commerce
- Hon. G.K. Butterfield  
Member, Subcommittee on Communications and Technology  
Committee on Energy and Commerce
- Hon. Yvette Clarke  
Member, Subcommittee on Communications and Technology  
Committee on Energy and Commerce
- Hon. Marcia Fudge  
Member of Congress (11th District, Ohio)
- Hon. Joyce Beatty  
Member of Congress (3rd District, Ohio)



Stacey Maris  
Senior Vice President -  
Assistant General Counsel and Secretary

AT&T Inc.  
208 S. Akard Street  
Room 3211  
Dallas, TX 75202

T 214.757.3330  
stacey.maris@att.com

April 28, 2017

Mr. Daryl D. Parks, Esquire  
Parks & Crump, LLC  
240 N. Magnolia Drive  
Tallahassee, FL 32301

Via Facsimile and U.S. Mail

Dear Mr. Parks:

Re: April 24 Letter Regarding Broadband Deployment in Cleveland

This letter follows my letter of April 25, 2017 concerning the above-referenced matter. As you requested, your April 24 letter was considered by the full AT&T Board of Directors at its meeting yesterday. After discussion, the Board instructed Management to prepare a fulsome response to your letter.

Per the Board's instruction, AT&T will deliver a substantive response to your letter promptly. In the meantime, please rest assured that AT&T, including its Board, takes the issues you raise seriously, but we do not agree with the allegations contained in your letter. Over the past five years, we have invested \$135 billion in our wireless and wired networks to bring broadband to consumers, and we don't favor any demographic when it comes to providing any service we offer.

Thank you for your correspondence to the AT&T Board of Directors. If I can answer any questions, please do not hesitate to give me a call.

Sincerely,

A handwritten signature in cursive script that reads "Stacey Maris".  
Stacey Maris

**AT&T**





James Meza III  
Senior Vice President  
and Asst. General Counsel

AT&T Services Inc.  
2260 East Imperial Hwy.  
El Segundo, CA 90245

T: 310-964-1454  
james.meza@att.com

*Licensed in TX & LA  
CA Registered In-House Council*

May 5, 2017

Mr. Daryl D. Parks, Esquire  
Parks & Crump, LLC  
240 North Magnolia Drive  
Tallahassee, Florida 32301

**Via Facsimile and U.S. Mail**

Re: *April 24, 2017 Letter Regarding Broadband Deployment in Cleveland, Ohio*

Dear Mr. Parks:

As you are aware, the AT&T Board of Directors has received and considered your letter referenced above. After discussion, the Board directed that AT&T prepare this substantive response. I am the Legal Officer responsible for the operations of AT&T's Entertainment Group, which provides wireless and wired broadband service to U.S. consumers. Going forward, I will be your contact point for any questions or correspondence related to this issue.

First and foremost, please rest assured that we take seriously the issues raised in your letter. Providing ubiquitous high-speed access to the internet is central to our mission as a company. Over the past five years alone, we have invested \$135 billion in our wired and wireless broadband networks – more than any other public company in any industry in the United States – to allow Americans of all income levels the opportunity to enjoy all that the internet offers.

Second, we will continue to expand our broadband footprint in Ohio and other states we serve. We invested more than \$1.4 billion in our Ohio networks over the past three years, and \$200 million in Cleveland specifically. At the same time, we are continuing to implement our plan to deploy fiber-to-the-premises to at least 12.5 million mass market customer locations in our wireline footprint by 2019. Further, we are experimenting with new technologies (including fixed wireless, 5G wireless, and other new technologies) to bring even more high speed broadband connections to consumers across our footprint. We also are participating in the FCC's Connect America Fund program to extend our reach as we continue to invest in our world-class wireless network.

Third, AT&T is engaged in a targeted effort to promote broadband adoption by low-income customers. We call it "Access from AT&T," and it features low monthly rates for the fastest of five wireline broadband services available to eligible participants – 10 Mbps and 5Mbps for \$10 per month, and 3Mbps, 1.5Mbps or 768Kbps for \$5 per month. We also waive credit checks and installation and equipment fees for participating households. We have partnered with national, state and local groups across the country (including in Cleveland) to educate potential participants regarding this program. And we have joined with the U.S. Department of Housing and Urban Development's ConnectHome initiative to help connect families living in HUD-assisted housing to low-cost Internet service.

With this background, let me now address the allegations in your letter, with which we respectfully disagree. Put simply, we do not engage in so-called digital redlining. Your allegations rely on a study by the National Digital Inclusion Alliance (NDIA),<sup>1</sup> which purports to find evidence of redlining based on an analysis of AT&T's wireline broadband deployment in only five wire centers in Cleveland (out of more than 250 in Ohio and 4,600 across our footprint). This study is flawed and its conclusions are specious. AT&T's investment decisions are based on cost and demand forecast modeling to determine where we can serve potential customers and, at the same time, recover the costs of deployment. Many factors are considered in this analysis. They include the state of the existing network, topology, the ability to use aerial cable rather than more expensive buried cable, the existence and type of competition that is present, the size of our existing customer base, the number and density of households, civic cooperation, and other standard business considerations. They do *not* include household income, race or ethnicity; those considerations simply are not part of our analysis.

Indeed, nothing in the NDIA study demonstrates otherwise. The five Cleveland wire centers on which NDIA hinges its analysis do not paint a complete or accurate portrait of our broadband offerings in Cleveland or elsewhere in Ohio. Across Ohio, including the Cleveland area, there are higher income areas to which AT&T currently can provide only lower speed wireline broadband services, and there are lower income areas to which we currently offer higher speed services. Indeed, looking at AT&T's deployment of wireline broadband across its entire Ohio footprint reveals that the proportion of customers with access to AT&T's higher speed wireline broadband services (18Mbps and faster) and lower speed services (6Mbps or slower) is roughly comparable, regardless whether households are below the poverty line or not.

NDIA's study is flawed in other respects as well. Among other things, it ignores AT&T's deployment of, and consumer demand for, mobile broadband services. AT&T's LTE mobile broadband network and services are available ubiquitously throughout Cleveland, including the five wire centers identified by NDIA. And many customers prefer mobile broadband services. Nationally, approximately half (49.3 percent) of households have "cut the cord" and are wireless only for telephone service. Ohio outpaces the national average with 51 percent of households utilizing wireless services only. Among Lifeline customers (a program developed to assist low income customers), cord-cutting seems even more prevalent, with approximately 90 percent of those customers choosing wireless over wireline services.<sup>2</sup> Similar trends are developing with broadband. Indeed, in 2015, the Pew Research Center reported that smartphone utilization had reached parity with home broadband use (which had plateaued), with the rise in "smartphone-only" adults especially pronounced among low-income households (defined as those with annual incomes of \$20,000 or less) and rural adults.<sup>3</sup> Now that every major wireless provider offers unlimited data plans, mobile broadband will presumably become even more attractive as mobile data prices continue to drop.

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<sup>1</sup> "AT&T's Digital Redlining" (rel. Mar. 10, 2017), available at <https://digitalinclusion.org/blog/2017/03/10/atts-digital-redlining-of-cleveland/> (last checked Apr. 30, 2017) (NDIA Report).

<sup>2</sup> <http://usac.org/li/about/process-overview/stats/total-support.aspx> (last checked (May 3, 2017).

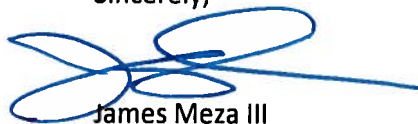
<sup>3</sup> <http://www.pewinternet.org/2015/12/21/home-broadband-2015/> (last checked 5/1/17).

We also disagree with any suggestion that we have violated any law or regulation in connection with AT&T's wireline broadband deployment in Cleveland. Although you reference Section 1981 of the Civil Rights Act, 42 U.S.C. § 1981, that provision prohibits racial discrimination in entering and enforcing contracts. As discussed above, AT&T's decisions related to wireline broadband deployment in Cleveland consider neither the income nor the race of current and potential customers, much less discriminate on that basis. Therefore, your letter asserts no colorable § 1981 claim.

Likewise, you question whether NDIA's allegations trigger an obligation on the part of the FCC or the Public Utilities Commission of Ohio under section 706 of the Federal Communications Act to "restrain AT&T from continuing to redline." Section 706, however, focuses on the deployment of broadband services generally to all Americans – not the deployment of a particular broadband service (or by a particular broadband provider) to consumers in a particular geographic area. Insofar as at least 93 percent of the households served by the Cleveland wire centers identified by NDIA have access to cable broadband services at speeds of 50Mbps or higher, and all such households have access to multiple mobile broadband networks, your reference to section 706 is misplaced, as the objective of that section already has been met.

I trust that this response addresses your concerns. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

James Meza III

By Courier Service

May 23, 2017

Randall Stephenson  
Chairman, CEO and President  
AT&T  
208 S. Akard Street  
Dallas, TX 75202

Stacey Maris  
Senior Vice President and Secretary  
AT&T  
208 S. Akard Street, Suite 3241  
Dallas, TX 75202

James Meza III  
Senior Vice President and Assistant General Counsel  
AT&T  
2260 East Imperial Highway  
El Segundo, CA 90245

Dear Mr. Stephenson, Ms. Maris and Mr. Meza:

**Re: Redlining**

On behalf of Cleveland Broadband Consumers, I am responding to the May 5, 2017 letter of Mr. Meza ("Meza Letter"), which, on behalf of the AT&T Board of Directors, responded to my April 24, 2017 letter regarding broadband deployment in Cleveland, Ohio.

Among other things, the Meza Letter:

- Denies that AT&T's failure to provide state-of-the-art broadband to most of the predominately low-income (and African American) neighborhoods in Ohio's largest city constitutes redlining;
- Defines redlining in such a way that only an extreme racial bigot could ever be found to be redlining; and
- Interprets the principal civil rights statute in telecommunications – Section 706 of the 1996 Telecommunications Act – in a manner that would render the statute completely impotent.

Since these positions were presented as representing the views of the AT&T Board of Directors, I am asking that my response to this letter be circulated to the Board members for their review.

For ease of reference, I am setting out each of the principal assertions in the Meza Letter and providing comments and questions, the answers to which may highlight the genuine differences of position that will constitute triable issues.

1. *Over the past five years alone, we have invested \$135 billion in our wired and wireless broadband networks – more than any other public company in any industry in the United States – to allow Americans of all income levels the opportunity to enjoy all that the internet offers....[w]e invested more than \$1.4 billion in our Ohio networks over the past three years, and \$200 million in Cleveland specifically....we are continuing to implement our plan to deploy fiber-to-the premises to at least 12.5 million mass market customer locations in our wireline footprint by 2019...*

*We also are participating in the FCC's Connect America Fund program to extend our reach as we continue to invest in our world-class wireless network.*

The amount of aggregate investment is irrelevant to discrimination in the placement of investments. If you were the City of Ferguson, Missouri, would you open your defense in the Michael Brown case by saying “we spent \$135 million on our Police Department last year?”

You then refer to the Connect America Fund program, which you state will “*extend our reach as we continue to invest in our world-class wireless network.*” Connect America is a rural program. Cuyahoga County is urban.

2. *Further, we are experimenting with new technologies (including fixed wireless, 5G wireless, and other new technologies) to bring even more high-speed broadband connections to consumers across our footprint.*

This assertion raises these questions, and I would appreciate a response:

*First*, will the deployment of these technologies fully cure the disparities evident in the NDIA/Cleveland study? If so, how will that happen, and how long would that take? In the interim, will the underserved customers be made whole for their loss of digital opportunity?

*Second*, as these new technologies are being deployed, will the maps and criteria for their deployment schedule resemble the maps in the NDIA study and the criteria identified in the Meza Letter (i.e., “*the state of the existing network, topology, the ability to use aerial cable rather than more expensive buried cable, the existence and type of competition that is present, the size of our existing customer base, the number and density of households, civic cooperation, and other standard business considerations*”) that yielded the patter of deployment reflected in the NDIA maps?

3. *Third, AT&T is engaged in a targeted effort to promote broadband adoption by low-income customers, We call it “Access from AT&T,” and it features low monthly rates for the fastest*

*of five wireline broadband services available to eligible participants – 10Mbps and 5Mbps for \$10 per month, and 3Mbps, 1.5Mbps or 768kbps for \$5 per month. We also waive credit checks and installation and equipment fees for participating households. We have partnered with national, state and local groups across the country (including in Cleveland) to educate potential participants regarding this program. And we have joined with the U.S. Department of Housing and Urban Development’s Connect Home initiative to help connect families living in HUD-assisted housing to low cost Internet service.*

A threshold question: please clarify whether consumers not reached with fast broadband are given all four options: 10Mbps, 5 Mbps, 3Mbps, and 768Kbps (all downstream).

None of these options comes close to meeting the FCC’s 2015 definition of broadband (25Mbps down, 3Mbps up). It is especially surprising that AT&T takes pride in offering some Cleveland consumers 768Kbps for \$5.00. Suppose a child is assigned to download and watch CBS’ 1968 documentary “Hunger in America”, which is 51:24 in length and can be found at <https://www.youtube.com/watch?v=h94bq4JfMAA>. The file, which is provided in MP4 format, is 261,215 KB at 480P (progressive scan). Downloading with <https://clipgrab.org/> at 768Kbps will take approximately 2,721 seconds or 45.35 minutes – almost as long as the program itself.

This third-class “offering” is reminiscent of municipalities that used to (and sometimes still do) contract out for inferior ambulance service, inferior water, and inferior electric service to “serve” the poor. Soon the use of these “services” becomes routinized. This is how geographic segregation replicates poverty across generations.

4. *[W]e do not engage in so-called digital redlining. Your allegations rely on a study by the National Digital Inclusion Alliance (NDIA), which purports to find evidence of redlining based on an analysis of AT&T’s wireline broadband deployment in only five wire centers in Cleveland (out of more than 250 in Ohio and 4,600 across our footprint). This study is flawed and its conclusions are specious. AT&T’s investment decisions are based on cost and demand forecast modeling to determine where we can serve potential customers and, at the same time, recover the costs of deployment. Many factors are considered in this analysis. They included the state of the existing network, topology, the ability to use aerial cable rather than more expensive buried cable, the existence and type of competition that is present, the size of our existing customer base, the number and density of households, civic cooperation, and other standard business considerations. They do not include household income, race or ethnicity; those considerations simply are not part of our analysis [fn. Omitted].*

You state that the NDIA study finds redlining “in only five wire centers in Cleveland (out of more than 250 in Ohio and 4,600 across our footprint).” Thus you are implying that the deployment pattern in Cleveland is *sui generis* and that similar patterns would not manifest themselves in other cities, such as Akron, Toledo, Dayton, Columbus and Cincinnati and other cities and their wire centers among the “250 in Ohio and 4,600 across our footprint” including California. Since you squarely raised this point, I trust you would be willing to provide the documentation to prove it.

I will address the issue of discriminatory intent below (*see* ¶7).



5. *Indeed, nothing in the NDIA study demonstrates otherwise. The five Cleveland wire centers on which NDIA hinges its analysis do not paint a complete or accurate portrait of our broadband offerings in Cleveland or elsewhere in Ohio. Across Ohio, including the Cleveland area, there are higher income areas to which AT&T currently can provide only lower speed wireline broadband services, and there are lower income areas to which we currently offer higher speed services. Indeed, looking at AT&T's deployment of wireline broadband across its entire Ohio footprint reveals that the proportion of customers with access to AT&T's higher speed wireline broadband services (18Mbps and faster) and lower speed services (6Mbps or slower) is roughly comparable, regardless whether households are below the poverty line or not.*

Of course NDIA did not find that every single wealthy neighborhood was served, and every single low-income neighborhood was not served. Such a “less than perfect” or “100 to zero” disparity never defeats a civil rights case. Even in the infamous racial gerrymandering case, *Gomillion v. Lightfoot*, 364 U.S. 339 (1960), at least four African American voters lived within the 28-sided borders of the City of Tuskegee after it was gerrymandered.

Due primarily to issues of terrain and density, rural broadband deployment cannot be compared with urban deployment. This lack of comparability is evident in the Benton Foundation's interactive map showing populations and densities, as of 2013 – <https://www.benton.org/blog/what-section-706-means-net-neutrality-municipal-networks-and-universal-broadband>. The map illustrates that Cuyahoga County, being entirely urban, generally had fixed 25Mbps/3Mbps available, whereas most of Ohio, being rural, did not have these broadband speeds available.

6. *NDIA's study is flawed in other respects as well. Among other things, it ignores AT&T's deployment of, and consumer demand for, mobile broadband services. AT&T's LTE mobile broadband network and services are available ubiquitously throughout Cleveland, including the five wire centers identified by NDIA. And many customers prefer mobile broadband services. Nationally approximately half (49.3 percent) of households have “cut the cord” and are wireless only for telephone service. Ohio outpaces the national average with 51 percent of households utilizing wireless services only. Among Lifeline customers (a program developed to assist low income customers), cord-cutting seems even more prevalent with approximately 90 percent of those customers choosing wireless over wireline services. Similar trends are developing with broadband. Indeed, in 2015, the Pew Research Center reported that smartphone utilization had reached parity with home broadband use (which had plateaued), with the rise in the “smartphone-only” adults especially pronounced among low-income households (defined as those with annual incomes of \$20,000 or less) and rural adults. Now that every major wireless provider offers unlimited data plans, mobile broadband will presumably become even more attractive as mobile data prices continue to drop [fns. omitted].*

People of color have led the way in adoption of mobile broadband. Recognizing this, AT&T has championed mobile broadband while also encouraging fast, affordable, *home* broadband adoption because of its importance in advancing education, health care, employment and civic engagement.

Thus, it is a surprise that AT&T now believes that low income consumers' uptake of mobile broadband excuses AT&T's failure to provide equal access to first class fast home broadband service.

7. *We also disagree with any suggestion that we have violated any law or regulation in connection with AT&T's wireline broadband deployment in Cleveland. Although you reference Section 1981 of the Civil Rights Act, 42 U.S.C. § 1981, that provision prohibits racial discrimination in entering and enforcing contracts. As discussed above, AT&T's decisions related to wireline broadband deployment in Cleveland consider neither the income nor the race of current and potential customers, much less discriminate on that basis. Therefore, your letter asserts no colorable §1981 claim.*

Although intent is an element of a Section 1981 claim (see *General Bldg. Contractors Ass'n. v. Pa.*, U.S. 375 (1982)), we do not expect it will be difficult to persuade a Cleveland jury to infer intent from the rather stark facts. As you know, a facially neutral decision rule is often struck down where the resulting pattern is unexplainable unless race had been a material factor. Courts often consider cases involving civil rights statutes with intent requirements, and infer discriminatory intent where the statistical and other evidence cannot be explained away by the pretextual justifications of the defendant. This drawing of inferences commonly arises in litigation under the Voting Rights Act. For example, in *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 214 (4<sup>th</sup> Cir. 2016), *cert denied*, 581 U.S. \_\_\_\_ (2017), the 4<sup>th</sup> Circuit overturned parts of North Carolina's highly restrictive 2013 voting law, noting that the provisions "target African Americans with almost surgical precision" and "impose cures for problems that did not exist."

No jury that's paying attention is going to find that it was just an accident that in Cleveland – and Toledo, and Dayton, and Cincinnati, and Columbus, and Detroit – and California – your use of every conceivable metric *except* race and income just happened to yield maps that exclude low income African American neighborhoods everywhere with almost surgical precision.

Finally, to the extent that AT&T collaborated with housing developers to install its service in residential housing, your activities are subject to the Fair Housing Act (FHA). As you know, disparate *impact* claims are cognizable under the FHA. *Texas Dep. Housing & Cmty Affairs v. Inclusive Communities Project*, 576 U.S. \_\_\_\_, 135 S.Ct. 2507, No. 13-1371, (decided June 25, 2015) (slip op., p. 2513). It will be difficult for you to avoid a disparate impact finding given that the Chairman of the FCC, in a March 15, 2017 address at Carnegie Mellon University, characterized the NDIA study as finding that "fiber was much less likely to be deployed in the low-income neighborhoods."

8. *Likewise, you question whether NDIA's allegations trigger an obligation on the part of the FCC or the Public Utilities Commission of Ohio under section 706 of the Federal Communications Act to "restrain AT&T from continuing to redline." Section 706, however, focuses on the deployment of broadband services generally to all Americans – not the deployment of a particular broadband service (or by a particular broadband provider) to consumers in a particular geographic area. Insofar as at least 93 percent of the households served by the Cleveland wire centers identified by NDIA have access to*



*cable broadband services at speeds of 50Mbps or higher, and all such households have access to multiple mobile broadband networks, your reference to section 706 is misplaced, as the objective of that section already has been met.*

You maintain that Section 706 provides no protection to consumers beyond ensuring that most (93 % is your number) consumers have one service of 50Mbps or higher (again, your number). Thus, by your reasoning, if Comcast does not redline, it matters not that AT&T does. Further, by your reasoning, Section 706 would provide no protection from redlining by AT&T as long as (most of) the poor have *one* fast broadband service to choose from. By your reasoning, the poor are not entitled to broadband competition. AT&T's current reading of Section 706 is on all fours with a contention that the protection afforded by the public accommodations section of the 1964 Civil Rights Act (42 U.S.C. §200a) reaches only one restaurant: as long as we can eat McDonald's, the Denny's next door can refuse us service.

Finally, it almost goes without saying that you are prohibited from redlining by Section 202 of the Communications Act, unless the Commission repeals that coverage retroactively and the courts uphold such action.

\*\*\*\*\*

You evidently have decided not to meet with my team or to address our proposal to empanel a board committee to address the redlining issue. Consequently, unless given good reason not to proceed, within the next three weeks we will take the following steps:

1. We will certify our class;
2. We will bring a formal complaint at the FCC invoking, *inter alia*, Title II and Section 706; and
3. We will inform the nation's governors of the deployment patterns in Cleveland and California that the NDIA and U.C. Berkeley studies have established. In that way, the governors can better determine how to evaluate your qualifications to provide the emergency communications service to low-income communities that first responders in disasters such as Hurricanes Andrew, Katrina and Sandy have recognized as top priorities.

Sincerely,  
**Parks & Crump, LLC**



Daryl D. Parks, Esquire  
240 N. Magnolia Drive  
Tallahassee, FL 32301

cc: AT&T Board of Directors:

- o Samuel DiPiazza
- o Richard Fisher
- o Scott Ford
- o Jimmy Hayes
- o Glenn Hutchins
- o William Kennard
- o Joe Madonna
- o Michael McAllister
- o John McCoy
- o Beth Mooney
- o Joy Roche
- o Matthew Rose
- o Cynthia Taylor
- o Laura Tyson
- o Geoff Yang

#### State of Ohio

- o Governor John R. Kasich
- o Clifford A. Rosenberger, Speaker of the House
- o House of Representatives, The Ohio Legislature
- o Larry Obhof, Senate President
- o Senate, The Ohio Legislature
- o Fred Strahorn, Minority Leader
- o House of Representatives, The Ohio Legislature
- o Joseph Schiavoni, Minority Leader
- o Senate, The Ohio Legislature

#### Members of Congress:

- o Hon. Greg Walden
- o Chairman, Committee on Energy & Commerce
- o Hon. Marsha Blackburn
- o Chairman, Subcommittee on Communications and Technology
- o Committee on Energy and Commerce
- o Hon. Frank Pallone
- o Ranking Member, Committee on Energy and Commerce
- o Hon. Michael Doyle
- o Ranking Member, Subcommittee on Communications and Technology
- o Committee on Energy and Commerce
- o Hon. Bobby Rush
- o Member, Subcommittee on Communications and Technology
- o Committee on Energy and Commerce
- o Hon. G.K. Butterfield
- o Member, Subcommittee on Communications and Technology
- o Committee on Energy and Commerce
- o Hon. Yvette Clarke
- o Member, Subcommittee on Communications and Technology
- o Committee on Energy and Commerce

- o Hon. Marcia Fudge  
Member of Congress (11th District, Ohio)
- o Hon. Joyce Beatty  
Member of Congress (3rd District, Ohio)



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240 North Magnolia Drive  
Tallahassee, Florida 32301

**VIA E-MAIL AND U.S. MAIL**

June 12, 2017

Re: May 23, 2017 Letter Regarding Broadband Deployment in Cleveland, Ohio

Dear Mr. Parks:

Thank you for your response to my May 5, 2017 letter, regarding your allegations of digital redlining in Cleveland. At the outset, I wish to emphasize that AT&T shares your goal of bringing high speed broadband as quickly as possible to underserved communities in both rural and urban areas. AT&T has a well-recognized, longstanding commitment to inclusion and diversity. Accordingly, I invite you and members of your team to meet in person with senior executives in our external affairs and legal organizations to discuss this matter. I am hopeful that direct discussion would be productive for both sides.

While we respect your concerns, there is no legal or factual basis to assert that AT&T is engaged in unlawful redlining or has violated civil rights statutes, such as 42 U.S.C. § 1981. Section 1981 requires a showing of racial animus or intentional discrimination. Neither is present here. As we have stated, we base our investment decisions on neutral and legitimate business considerations. For that reason, you could not establish a Section 1981 violation by attempting to show that our neutral broadband deployment policies had a disparate impact on different racial groups.

Furthermore, Section 1981 applies only to conduct associated with services that are already being supplied and not the types of investment decisions that your letter addresses. See 42 U.S.C. § 1981 (applicable to "the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship."). Thus, a plaintiff must show that he or she "has or would have rights under the existing or proposed contractual relationship," *Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 476 (2006), which the Sixth Circuit has emphasized applies only to "services ordinarily provided by the defendant." *Christian v. Wal-Mart Stores, Inc.*, 252 F.3d 862, 872 (6th Cir.), *opinion supplemented on denial of*

*reh'g*, 266 F.3d 407 (6th Cir. 2001). Because AT&T offers services supported by the infrastructure that it has in place without regard to membership in a protected class, all similarly situated persons are entitled to receive the same contractual rights.

Section 1981 does not require service providers to provide *additional* services or to change the nature or scope of their service offerings. Just as the statute does not require retailers to open additional stores or change their product offerings, neither does it require service providers like AT&T to make additional infrastructure investments to offer different services or to provide them in new locations. See *Chapman v. YMCA of Greater Buffalo*, 161 F.R.D. 21, 24 (W.D.N.Y. 1995).

Although we are confident that AT&T's broadband deployment in Cleveland and elsewhere is fully consistent with all legal requirements and with our own commitments to inclusion and diversity, we would welcome the opportunity to engage further with you on how we can even better serve the communities in which we operate. I look forward to hearing from you regarding the meeting I have proposed.

Sincerely,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

James Meza III

By Courier Service

July 24, 2017

Randall Stephenson  
Chairman, CEO and President  
AT&T  
208 S. Akard Street  
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Stacey Maris  
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James Meza III  
Senior Vice President and Assistant General Counsel  
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2260 East Imperial Highway  
El Segundo, CA 90245

Robert Quinn  
Senior Vice President, External and Legislative Affairs  
AT&T  
1120 18<sup>th</sup> Street, NW  
Washington, DC 20036

Dear Mr. Stephenson, Ms. Maris, Mr. Meza and Mr. Robert Quinn:

**Re: Redlining**

On behalf of Cleveland Broadband Consumers, I am writing to illuminate a key issue we would like to address in the wake of the meeting with Mr. Quinn and his team at 9:30 AM this past Friday, July 21, 2017. Inasmuch as this issue goes to the basic reliability of the company's most fundamental communications with the FCC and with its key stakeholders, it ought to be addressed at the governance level of the company. Consequently and respectfully, I am renewing my April 24, 2017 request for a meeting with Mr. Stephenson. Further, as a stakeholder, I am asking the board for an opportunity to address this issue at its next meeting.

In your earlier correspondence to me, and in the July 21 meeting, the company attempted either to justify or explain the stark disparities in fast broadband deployment in Cleveland on grounds of race-neutrality and income-neutrality. Mr. Meza's May 5, 2017 letter to me state that:

AT&T's investment decisions are based on cost and demand forecast modeling to determine where we can serve potential customers and, at the same time, recover the costs of deployment. Many factors are considered in this analysis. They include the state of the existing network, topology, the ability to use aerial cable rather than more expensive buried cable, the existence and type of competition that is present, the size of our existing customer base, the number and density of households, civic cooperation, and other standard business considerations. They do *not* include household income, race or ethnicity; those considerations simply are not part of our analysis.

Amplifying on this issue at our July 21 meeting, Mr. Quinn was surprisingly combative, saying "I'm a litigator too, and not as diplomatic as my predecessor" making it clear that he was looking for a fight. Mr. Quinn went so far as to characterize the NDIA-documented service disparities as strictly an economic issue – "non-service" (!) based entirely on cost and demand – and thus justified as long as after 45 minutes of the 1-½ hour scheduled meeting. I did not find this Donald Trump-like, "my way or the highway" approach conducive to working with stakeholders to solve problems.

We do not agree that "non-service" to mostly minority, impoverished neighborhoods is not redlining. Among other things, "demand forecast modeling" often translates as disposable income or wealth. Wealth is virtually a proxy for race, given that the wealth gap is at least 13:1 according to Pew, Brandeis and others.

Moreover, from the vantage point of the "non-served", it matters not whether racial animus or "demand forecast modeling" leaves them last in line to cross the digital divide.

Still, let's assume for the sake of argument that your claim of race- and income-neutrality is valid. *Why, then, did AT&T not disclose in 2007-2010 to the FCC, and to its civil rights organization stakeholders and supporters in the net neutrality debates, that you planned to roll out fast broadband along the lines of the Cleveland NDIA map?* If you had "neutral" reasons for your rollout schedule, couldn't you have explained that? Why did AT&T instead withhold its rollout plans and maps, only to have NDIA assemble and release them? Can you see how this lack of transparency created the appearance that you had something to hide?

Indeed, your public advocacy, specifically during the years when you were planning and deploying broadband in cities like Cleveland, created the clear impression that you intended to deploy ubiquitously. In your 2007 Broadband Industry Practices Reply Comments,<sup>1</sup> you stated that:

[E]mpirical studies show that, each time the government has *relaxed* regulatory burdens on wireline broadband providers, those providers have responded by expanding their networks and dropping their prices. That is why the commenters most concerned with closing the "digital divide" – with extending the benefits of broadband to rural and low-income communities – oppose net neutrality regulation. [p. 13; fns. omitted; citing comments p. 47 n. 152 that expressly connect light touch Internet regulation with deployment to inner city communities].<sup>2</sup>

Further, in your 2010 Open Internet Reply Comments,<sup>3</sup> you stated that:



<sup>1</sup> Reply Comments of AT&T Inc., Broadband Industry Practices, WC Docket No. 07-52 (filed July 16, 2007), available at <https://ecfsapi.fcc.gov/file/6519558101.pdf> (last visited July 17, 2017).

<sup>2</sup> Footnote 152 reads:

LULAC Comments 1 (“While large numbers of Latinos have enjoyed increased economic, educational and political opportunity with the click of a mouse, for a variety of reasons, others have not yet experienced the benefits of the Internet.... [W]e urge policymakers to cast a skeptical eye on proposed net regulations that could reduce the incentive to invest and, thereby, limit innovation and deployment to underserved communities.”); Labor Council for Latin American Advancement Comments 1 (“[M]any of today’s broadband providers are investing capital to increase broadband deployment.... Additional regulation of these providers, as advocated by supporters of ‘net neutrality,’ would actually inhibit their efforts, and thus slow the progress we so desperately would like to witness on behalf of our members and the Latino community. Net neutrality laws will take away the incentives these providers have to invest, and will leave Latinos specifically, and Americans overall with less access[.]”); Hispanic Technology & Telecommunications Partnership Comments 2 (“[N]o compelling reason currently exists to establish new regulations in addition to the FCC’s existing policy statement.... [We] encourage the Commission to seek policies that promote investment, development of new technologies, and the expansion of broadband services. If this happens we will be well on our way to eliminating the digital divide for Hispanics and all underserved Americans.”); *see also Hermalin and Katz, supra*, at 2 [Benjamin E. Hermalin & Michael L. Katz, *The Economics of Product-Line Restrictions with an Application to the Network Neutrality Debate*, Competition Policy Center, at 2 (2006) (<http://repositories.cdlib.org/iber/cpc/CPC06-059>)] (“consumers at the bottom of the market-the ones that single-product restrictions typically are intended to aid-are almost always harmed by the restriction” on differentiation among product lines).”

<sup>3</sup> Reply Comments of AT&T Inc., Preserving the Open Internet, GN Docket No. 09-191 *et al.* (filed April 26, 2010), available at <https://ecfsapi.fcc.gov/file/7020437381.pdf> (last visited July 17, 2017).

[C]alls for net neutrality regulation are an unfortunate distraction from the important work that remains to be done in bringing ultra-fast next-generation Internet service to all Americans (p.1) ...

And [many parties] rightly caution the Commission about the unintended consequences of such rules, such as hindering broadband investment and innovation, widening the digital divide, ceding U.S. leadership in Internet technology, depressing job creation and economic growth, and increasing security risks for networks and consumers.

The voices in this emerging consensus include not only AT&T and hundreds of other broadband network operators-ranging from cable companies to CLECs like Covad, to rural ILECs like the members of NECA, to international providers like Telefonica-but also:



- Civil rights groups such as the NAACP and LULAC (pp.2-3), citing, in n. 2, a letter from a leader of the NAACP and a commentary from the Executive Director of LULAC, as well as an op-ed by Navarrow Wright, Who Pays the Price for Net Neutrality?, Huffington Post, Jan. 18, 2010, available at [http://www.huffingtonpost.com/navarrow-wright/who-pays-the-price-for-net-neutrality\\_b\\_427500.html](http://www.huffingtonpost.com/navarrow-wright/who-pays-the-price-for-net-neutrality_b_427500.html) last visited July 17, 2017) (“When I read the blogs and filings of groups like Free Press and Public Knowledge, I wonder who they really represent.... The FCC is playing a dangerous game here, and *the people who have the most to lose are already the socially and economically disenfranchised members of our national community-low-income, rural, urban, non-English speaking, tribal, minority ... and underserved populations*”) (emphasis supplied).

Anyone reading this would never imagine that AT&T’s actual deployment plans omitted minority communities in Cleveland and other major cities. Certainly any carrier planning to spend billions of dollars deploying broadband would have known years in advance where it was going to roll out its service first – and last. Had AT&T disclosed in 2007 or 2010 that its actual plans were to deploy by 2017 along the lines of the NDIA Cleveland maps, the civil rights organizations, as well as the FCC, certainly would have asked for clear assurances that such deployment would have been rare, temporary, and not tainted with the breath of the conscious or unconscious racial animus that unfortunately can linger in the corridors of even the most well intentioned companies.

By *not* having disclosed your actual plans in 2007 and 2010, you created the current dilemma. I am certain civil rights leaders wish you had told them, years ago, that you didn’t intend to deploy with dispatch in their constituents’ communities, where the need was greatest. But they trusted you. They could have handled the news.

Not having told the FCC is quite another matter. The FCC expects its regulatees to place on the record all material facts. It knows nothing of demurrers. Asking the FCC to impose only light-touch regulation because it would help close the digital divide certainly makes a company’s plans *not* to close the digital divide in deployment highly relevant, irrespective of whether such a plan is or isn’t “redlining” as we say it is, or whether it is or is not “illegal” as we say it is. This conscious nondisclosure was a classic “material omission,” and the Commission will have to decide how to address it.<sup>4</sup>

I do not want to take up Mr. Stephenson’s time debating what went wrong. We will never agree on that. Instead, we should focus on what’s going to happen when 5G is rolled out and FirstNet. Why should the governors of our country allow AT&T to build out the greatest communication highway in the world, with taxpayers’ dollars, when you are redlining against the nation’s most vulnerable populations? The answer is easy, they should not. FirstNet is an honor you do not deserve until you eliminate your redlining practices.

These are questions of planning and communication, which reasonable people can resolve even while they disagree on the law. But in the wake of Mr. Quinn’s well informed but belligerent presentation, it’s clear that AT&T should be addressing this subject as one of governance as well as one of law and policy.

\*\*\*\*\*

So that we may share this letter with the members of the AT&T Board of Directors, please transmit the letter to each director via internal AT&T mail to ensure that it is properly and immediately received.

Sincerely,  
***Parks & Crump, LLC***



Daryl D. Parks, Esquire  
240 N. Magnolia Drive  
Tallahassee, FL 32301

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<sup>4</sup> Resolving different holdings by circuit courts of appeals, the Supreme Court recently held unanimously, that material omissions can be treated the same as misrepresentations. When the defendant “omits its violations of statutory, regulatory, or contractual requirements, those omissions can be basis for liability if they “render the defendant’s representations misleading with respect to the goods or services provided.” *Universal Health Services v. U.S.*, 136 U.S. 1989, 1999 (2016).

cc: AT&T Board of Directors:

- o Samuel DiPiazza
- o Richard Fisher
- o Scott Ford
- o Jimmy Hayes
- o Glenn Hutchins
- o William Kennard
- o Joe Madonna
- o Michael McAllister
- o John McCoy
- o Beth Mooney
- o Joy Roche
- o Matthew Rose
- o Cynthia Taylor
- o Laura Tyson
- o Geoff Yang

State of Ohio

- o Governor John R. Kasich
- o Clifford A. Rosenberger, Speaker of the House
- o House of Representatives, The Ohio Legislature
- o Larry Obhof, Senate President, The Ohio Legislature
- o Fred Strahorn, Minority Leader, House of Representatives, The Ohio Legislature
- o Joseph Schiavoni, Minority Leader, Senate, The Ohio Legislature

## Members of Congress:

- o Hon. Greg Walden  
Chairman, Committee on Energy & Commerce
- o Hon. Marsha Blackburn  
Chairman, Subcommittee on Communications and Technology  
Committee on Energy and Commerce
- o Hon. Frank Pallone  
Ranking Member, Committee on Energy and Commerce
- o Hon. Michael Doyle  
Ranking Member, Subcommittee on Communications and Technology  
Committee on Energy and Commerce
- o Hon. Bobby Rush  
Member, Subcommittee on Communications and Technology  
Committee on Energy and Commerce
- o Hon. G.K. Butterfield  
Member, Subcommittee on Communications and Technology  
Committee on Energy and Commerce
- o Hon. Yvette Clarke  
Member, Subcommittee on Communications and Technology  
Committee on Energy and Commerce
- o Hon. Marcia Fudge  
Member of Congress (11th District, Ohio)
- o Hon. Joyce Beatty  
Member of Congress (3rd District, Ohio)



**Robert W. Quinn, Jr**  
Senior Executive Vice President  
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August 3, 2017

Mr. Daryl Parks, Esquire  
Parks & Crump, LLC  
240 N. Magnolia Drive  
Tallahassee, FL 32301

Dear Mr. Parks,

I am in receipt of your letter dated July 24, 2017 addressed to Randall Stephenson, Jim Meza, Stacy Maris and me. Let me start by stating that, as requested, we shared and discussed your letter with Mr. Stephenson and our Board of Directors at our regularly scheduled July Board meeting last week. Let me also state that I am sorry you perceived me to be belligerent or combative during the meeting. I can assure you that it was not my intent to pick a fight with you, but rather to get us on the path of resolving the concerns you have expressed in your letters on this subject. I had only wished to convey that we believe your legal allegations concerning redlining are not supported by the facts of this case or law. If in conveying our side of that case, I did that in a manner you perceived as aggressive or disrespectful, I sincerely apologize. The entire purpose of the meeting was to seek to find some common ground upon which we could work together to pursue our mutual goal to ensure that the benefits of broadband are received across all socio-economic groups. I am hopeful we can continue that aspect of our discussion.

As I explained in the meeting, AT&T does not redline. We do not take race, ethnicity, or income into account in determining whether a specific broadband technology can be deployed in a given area. I also highlighted that we seek out any efficient access technology to deliver broadband to our consumers. As we move into a 5G mobile world, we will use that technology to expand the availability of bigger and faster broadband, particularly in areas where the economics of fiber are prohibitive I had hoped that expansion of our mobile broadband technology could provide the basis for addressing some of the issues raised in your letters, particularly because research suggests that fixed home broadband adoption rates have plateaued while mobile broadband reliance continues to grow. One of the main problems with the NDIA study you have referenced is that it ignores the wireless infrastructure which AT&T has deployed ubiquitously in Ohio, including in the five wire centers that are highlighted in the NDIA study.

**AT&T**



We truly believe wireless technology will help us to achieve our common goals. I believe we can engage in a productive and cordial discussion regarding how to pursue an agenda to upgrade that wireless infrastructure, including deploying small cell technology in those wire centers as we begin moving down the path towards 5G. I would like to continue that dialog as I thought we agreed to do at our meeting. I will contact you again early next week to see if you are willing to begin those discussions.

Sincerely,

*Robert W. Quinn*